



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.
AUDREY DEMICOLI**

Sitting of the 14 th January, 2011

Number. 1000/2005

Police

(Inspector Edel Mary Camilleri)

vs

Lisa Borain

The Court ;

Having seen that the accused Lisa Borain, 26 years old, daughter of Kenneth Borain and Monica nee' Ellul, born in St Julians on the 22nd March 1978 and residing at 3, Montpellier Gardens, Gizimin Street, Swieqi, holder of identity card number 211378(M) was arraigned before her accused with having:

a) On the 28th November 2002 and in the following years on these islands, changed into profit for her or for another person, the amount of LM 400, which amount had been entrusted or delivered to her by reason of her profession, trade, business, management, office or service or in consequence of a necessary deposit, under a title which implies an obligation to return such thing or to make use thereof for a specific purpose to the detriment of Jos. Debono (Jewellers) Limited, Pavillion Jewellers Limited, Edwards Lowell Company Limited, Time International Company Limited and L'Orafo Company Limited and this In breach of sections 293 and 294 of the Criminal Code;

b) By reason of her calling, profession or office, became the depositary of a secret confided in her and this in breach of section 257 of the Criminal Code;

Having seen all the acts of the proceedings including the Attorney General's consent dated 8th November 2005 (exhibited a. folio 30 of the proceedings) for this case to be treated summarily.

Having heard the accused declare that she has no objection that this case is heard summarily.

Having heard all evidence submitted in this case.

Having heard the final submissions made by the Prosecution and the Defence Counsel.

Having considered that:

On the 22nd December 2003 the Police received a complaint dated 18th December 2003 filed by Dr. Italo Ellul on behalf of Jos. Debono Jewellers Limited, Pavillion Jewellers Limited, Edwards Lowell Company Limited, Time International Company Limited and L'Orafo Company Limited (relative complaint is exhibited at folio 31 of these proceedings) whereby the complainants requested the Police to charge the accused Lisa Borain with misappropriation in terms of Sections 293, 294 and

309 of the Criminal Code. The facts of the case are briefly as follows. Between the 29th November 2002 and the 1st December 2002 a jewellery exhibition was organised by the accused on behalf of the complainants whereby the latter appointed the former as a co-ordinator to organise the said exhibition. The five complainants passed on to the accused separate lists of clients whom they wished to be invited to the exhibition. These lists were also passed on to Chrome Advertising Limited who were in charge of the marketing for this exhibition. The complainants agreed to pay the accused the sum of Lm400 for her services. A year later another exhibition was organised by the accused, this time on behalf of Classic Jewellers and Diamonds International and the complainants are alleging that the accused passed on the lists of their clients which they retained to be confidential to the said Classic Jewellers and Diamonds International. Some time after the second exhibition was held the complainants held a meeting with the accused whereby they informed her that clients of theirs who were on the confidential lists which they had passed on to her had received invitations for the Diamonds International exhibition and they therefore accused her of having passed on the confidential clients' lists which they had given her for the purpose of sending invitations. The accused told the complainants during this meeting that for the Diamonds International exhibition she had only used data which she had compiled herself on the final day of the first exhibition whereby the said exhibition was open to the public and this for the purpose of determining what sort of people were interested in these type of exhibitions. From the evidence brought forward by the Prosecution in this case it transpires that the contract of service between the accused and complainants was verbal and that no confidentiality agreement was ever signed by the parties. The complainants are alleging that the accused passed on the list to Diamonds International and Classic Jewellers because there were clients of theirs and family members who had received invitations for the Diamonds International exhibition with the same mistakes in their names or addresses which appeared on the original clients' lists which they had passed on to the accused for the Luxury 2002 exhibition.

The accused is rebutting the complainants' allegations. When she gave evidence in these proceedings (transcription of evidence at folio 126 to 133) she explained that she had come up with the idea to organise the Luxury 2002 exhibition and when she had contacted Sandro Azzopardi of L'Orafo Company Limited he had accepted to participate but only with the other complainants as participants. The accused explained that all the complainants had passed on to her their client lists so that she could send invitations for the first night of the exhibition. She said that nothing was ever mentioned by any of the complainants about these lists being confidential but as a matter of professional courtesy she did not divulge these lists to third parties. The accused explained that she had also compiled her own list of people to invite for the second day of the exhibition and the third day was open to the public. The accused explained further that on the third day of the exhibition she decided to compile her own data by taking the details of the people who attended so as to assess what sort of people were interested in this exhibition. She said that after the exhibition she passed on a copy of this data to all the complainants. The accused also said that a year later she had contacted the complainants and asked whether they were interested in participating in another exhibition but they all declined and she therefore organised the exhibition with Diamonds international and Classic Jewellers as participants. She explained that the latter had passed on to her an extensive list of their clients for the purposes of sending invitations and she had also used her own data to send out invitations. This was confirmed by Paul Fenech, the director of Classic Jewellers Limited, who gave evidence on the 15th July 2010.

The accused is being charged with misappropriation of the sum of Lm400 in terms of sections 293 and 294 of the Criminal Code. From the evidence brought forward by the Prosecution in this case it emerged very clearly and beyond any doubt that the accused was paid the Lm400 by the complainants as the price for the services which she rendered to them for organising the exhibition. It also

transpired that the accused did in fact render the said services and the Court therefore fails to see how she can ever be found guilty of having misappropriated the said sum of Lm400. At no stage during these proceedings did any of the complainants allege that the accused had misappropriated the amount of m400 which they had paid her for services duly rendered. The accused is therefore going to be declared not guilty of the first charge brought against her.

The accused is also being charged with having violated a trade secret in terms of section 257 of the Criminal Code, namely that she was entrusted with a trade secret which she then divulged to third parties. For this offence to subsist one must prove first and foremost that the accused has been entrusted with a trade secret. One must also prove that the accused knows or has been duly informed that the data or information passed on to her constitutes a trade secret and one must also prove that the accused has knowingly and maliciously passed on that information to a third party. In this case the Court deems that none of these elements exist. It is doubtful whether clients' lists can be considered to be trade secrets but in any case at no point during these proceedings did it transpire that the parties had signed a confidentiality agreement or that the complainants had informed the accused that the contents of the lists which they passed on to her constituted a trade secret. Even if by any stretch of the imagination one had to consider the said lists to contain trade secrets the Court deems that the accused still cannot be found guilty of the offence indicated in Section 257 of the Criminal Code because the Prosecution failed to prove beyond reasonable doubt that the accused passed on the clients' lists handed over to her by the complainants to third parties. The accused admitted only that she had used the data which she had compiled herself during the third day of the 2002 exhibition when the said exhibition was open to the public. No evidence was brought forward indicating that the said data belonged to the complainants. Moreover at no point in time did the accused ever admit that she had passed on to third parties the lists given to her by the

Informal Copy of Judgement

complainants. The Court would like to point out that the complainants just made very generic allegations that they had evidence that the accused had passed on their clients' lists to third parties without ever bringing forward any concrete or tangible evidence in this regard.

Fro the abovementioned reasons, the Court is declaring the accused as not guilty of the charges brought against her and is consequently acquitting her from the said charges.

< Final Judgement >

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