

**COMPTROLLER OF THE COOK ISLANDS CUSTOMS SERVICE**

v

**JANA OLSON**

Date: 22 July 2015

Counsel: Mr A Sumbak for the Comptroller  
Mr N George for Defendant

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**DECISION OF THE HONOURABLE MR JUSTICE COLIN DOHERTY**

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[1] Jana Olson pleaded guilty on the 15<sup>th</sup> of this month to a charge of producing to a customs officer a document that was erroneous in a material particular knowing that the document was erroneous. This was a departure declaration wherein Ms Olson declared that she was not carrying \$10,000.00 NZD or more or the equivalent in foreign currency.

[2] She was approached by the customs officers, asked to sign an additional form which gave her another opportunity to properly declare and then when her bags were searched. Customs found \$17,805.00 US and \$50.00 NZD in cash together with seven individual cashier's cheques drawn on various banks and accounts to the total amount of \$114,166.00 USD.

[3] Additionally in another bag was found \$100.00 South African Rand, \$432.00 USD, \$50.00 United Arab Emirates Drem, \$10.00 East Caribbean dollars, \$70 EURO and \$791.00 USD. The total value of currency including the cheques approximated \$196,000.00 NZD.

[4] She gave various explanations. Namely; she forgot the currency was in her possession, she didn't pack her bags and someone else had without her permission, someone had planted the currency and someone at the resort she had been staying at had got rid of medication that she needed for concentration and alertness.

[5] I adjourned the matter having taken a guilty plea to the charge that was brought pursuant to sections 26(1)(4)(c) and 26 (1)(5)(a) of the Customs Revenue and Border Protection Act 2012 primarily because of an anticipated application for the Court to exercise its discretion pursuant to Section 302 of that Act, that enables the Court on conviction to order the restoration of the goods forfeited to the person from whom the goods were seized. That would have allowed for either the cash or the cheques or both of part of them to have been returned to Ms Olson.

[6] It is clear that there is a presumption in favour of condemnation of the goods. Subsequently and today, Ms Olson filed an affidavit and gave further evidence. She has in that affidavit abandoned that explanation that she gave to the customs officer at the time apart from the fact of medication. Not emphasising that someone at the resort got rid of it but that she had run out of it. The thrust of her affidavit is that she has a neurological or part neurological medical condition which requires certain medication.

[7] She says "It is absolutely essential for me that I take my medication otherwise I'm unable to make decisions or function properly. Unfortunately during my trip to the Cook Islands I ran out of medication which is Adderall which I have to take twice daily for myself to be able to function normally. Without my Adderall medication it is extremely difficult for me to function at all. Without the medication, I am unable to properly read and complete documents and I am also unable to have clear judgment, I am unable to make proper decisions and a part of my condition if I don't have the medication is that I cannot differentiate facts from fiction and am prone to making all sorts of false statements. Accordingly, when I was interviewed in relation to the offence I had no idea as to what statements I was making during my interview because of the result of my condition."

[8] This is a mens rea offence and I would have thought that that would have given a possibility of a good defence to the charge. Counsel for the informant did not wish to cross-

examine on the affidavit and says the informant is prepared to accept the contents of it as to Ms Olson's medical condition and lack of medication on the day.

[9] Notwithstanding the possibility of a defence, Ms Olson has instructed counsel to maintain the plea of guilty and to seek a discharge without conviction pursuant to Section 112 of the Criminal Procedure Act. That section gives me a wide discretion. A discharge would deem to be an acquittal. The result would be that there would be no opportunity for the Court to exercise its discretion under Section 300 (2) and therefore the forfeiture would remain and other procedures would need to be invoked by Ms Olson under the Customs Revenue and Border Protection Act.

[10] She accepts that and accepts that it will probably be necessary for her to return to the Cook Islands to pursue that should there be a discharge without conviction. In support of that application, she refers not just to her medical condition but to other factors.

[11] Firstly, that she is of good character. I have received as part of her affidavit, character references from friends of her and her family. They speak glowingly of her. There were also other references. One by email and another typed but unsigned. They both talk of her integrity, her kindness and her love for her family. As part of her affidavit, there is also a note from her physician in California confirming her neurological diagnosis and a note from one of her Californian Attorney's to which I can put little weight because all that does is really tell me what he has been told by Ms Olson.

[12] There is also her submission (which is also referred to in her affidavit) as to a divorce proceeding and the fact that any conviction would have some impact upon a custody dispute between her and husband relating to their two children.

[13] She has no previous convictions, she has also in the past attained a diplomatic status for the Countries of Saint Kitts, and Nevis. The latter came by way of submission of her counsel but in support he has presented to the Court a copy of an expired diplomatic passport which shows "Jana Doris Olson" was the holder of a diplomatic passport. So she may have changed her name because her affidavit describes her as "Jana Weeks Olson" but in any event, it is a extremely good likeness and the signature on it appears to be the same as that on the affidavit.

[14] She admits that she does not currently hold that status by way of passport but certainly any conviction would thwart her future opportunity. I accept that that is likely to be the case and accepted from the bar evidence from Mr George her counsel who has wide political experience in the Cook Islands and is knowledgeable about such things.

[15] To exercise my discretion to discharge her without conviction, means that I must be satisfied that the consequences of conviction would outweigh her culpability. On the basis that the informant accepts her medical condition had the effects that she says in her affidavit, it is accepted that her culpability in this case is low. On the other hand the potential affects particularly upon her later abilities to travel, to participate potentially as a diplomat for a country, the fact that this Court can take judicial notice that convictions are always brought to bear in custody cases and the potential impact upon that, mean that I think that the consequences of a conviction do outweigh her culpability.

[16] The informant does not seek any costs of this prosecution. Therefore I, having noted earlier the plea of guilty, discharge Ms Olson without conviction pursuant to s.122 of the Criminal Procedure Act. She is ordered to pay Court costs of \$30.00.

[17] That will mean that the potential bringing to bear of s.300 (2) of the Customs Revenue and Border Protection Act does not come into play and the forfeiture and condemnation issues will have to go to another day and another procedure.

[18] You may stand down

  

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**Colin Doherty, J**