

**IN THE DISTRICT COURT  
AT AUCKLAND**

**CRI-2013-004-005248  
[2016] NZDC 10933**

**THE SERIOUS FRAUD OFFICE  
ON THE PROSECUTION OF THE SOLICITOR-GENERAL**

v

**ELI DEVOY (AKA ELLIE STONE AND ELI GHORBANI)  
MEHRDAD GHORBANI (AKA MOHAMMAD GHORBANI SARSANGI)  
MEHRZAD GHORBANI (AKA MEHDI GHORBANI)  
HASSAN SALARPOUR  
NASRIN KARDANI  
JAVAD TORABY**

Hearing: 2, 3, 4, 9-12, 16-19, 22-26 and 29 February 2016  
1-4, 7-11, 14, 18, 21-24, 30, 31 March 2016  
1, 4-7 April, 4-6, 9 May 2016

Appearances: T Simmonds and M Gatland for the Solicitor-General  
M Wharepouri (until 7 April 2016) and Q Duff for  
the Accused Devoy  
Accused Mehrdad Ghorbani in Person  
Accused Mehrzad Ghorbani in Person  
J Scott and C Wright for the Accused Salarpour  
K Barron-Afeaki SC (Tonga) and S Withers for  
the Accused Kardani  
H Leabourn and G Gharhaman for the Accused Toraby  
C Maxwell as Amicus Curiae for the unrepresented Accused

Verdicts: 17 June 2016

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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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## **Introduction**

[1] The accused in this trial are all immigrants from Iran and are either related or known to each other through their membership of the Persian community in Auckland. They are charged with a number of frauds committed against seven Banks or lending institutions: the ANZ National Bank, New Zealand Home Loans (Kiwibank), the Bank of New Zealand (“BNZ”), ASB Bank (“ASB”), ANZ Bank (“ANZ”), Westpac Bank (“Westpac”), and the Southern Cross Building Society (“Southern Cross”).

[2] Mrs Eli Devoy, who at one time worked as a mortgage broker, is said by the prosecutor to be the organiser and ring leader for the offending. She was charged in 22 of the 25 counts, either singly or jointly with other accused, and features in the remaining 3 counts having earlier pleaded guilty to these. She had also pleaded guilty to another count on an earlier indictment. Her brothers, Mehrdad and Mehrzad Ghorbani, are also among the accused as is her brother in law, Hassan Salarpour. Nasrin Kardani, another accused was close to the Ghorbani family, having been in a relationship with Mehran Ghorbani, another of the Ghorbani brothers who earlier pleaded guilty to 3 counts. The remaining defendant, Javad Toraby had been a friend of Mrs Devoy.

[3] Mrs Devoy and her brothers also feature in the counts under various names. Mrs Devoy’s name when she came to New Zealand was Elaheh Ghorbani Sarsangi, the latter two names being her surname. To Persians living in New Zealand who knew her, she was known by her first name, or a shortened version of it. To New Zealanders and others she was generally called Eli, or Ellie. She changed her surname to Devoy when she married Warren Devoy, a New Zealander who worked as a mortgage broker. After they separated in 2011 she decided to anglicise her surname and so changed it formally to Stone, that being a direct translation of Sarsangi. In these verdicts I have used Ms Stone’s former married name of Devoy as that was how she was known to most of the witnesses.

[4] When Mehrdad Ghorbani came to New Zealand he was known as Mohammad Ghorbani Sarsangi. The first name is both an Islamic religious name and an Arabic name. He preferred to be called by his Persian name, Mehrdad, and so used that name together with the surname Ghorbani as he found his dual surnames inconvenient. It was not possible to change birth names in Iran and so he, in common with several of the Persians

who gave evidence, changed his name once established in New Zealand. He changed his name to Mehrdad Ghorbani by Deed poll on 24 April 2006.

[5] Similarly, Mehrzad Ghorbani preferred to use his Persian name rather than his Arabic name of Mehdi, and he also abbreviated his surname to Ghorbani. A third brother, Mehran Ghorbani, gave evidence on behalf of Mrs Devoy, and features in counts 5, 6 and 7 (to which he earlier pleaded guilty) under the name Massoud Ghorbani and the unlikely one of Ken Williams. He said he adopted the latter name as he worked occasionally in commercial television and having an English name meant it was easier to get work through agencies.

[6] The allegations centre on the use of documents said to be false and fraudulent, and on false claims in mortgage loan applications forwarded to the various lending institutions. The Crown claims the applications were used to support successful applications for mortgage finance which led to the acquisition and sale of at least 11 properties. The defendants acquired or sold these properties either to themselves or to other members of the Iranian community who were used as ‘dummy purchasers’, the sale price being inflated or deflated from earlier purchases among the group as required. The total value of the loans obtained through the provision of information the Crown alleges was false, was \$5,823,912.91. In some instances Mrs Devoy was the true owner of the properties which were bought in the names of other defendants or of third parties introduced by Mrs Devoy. The prosecutor alleges she was the primary beneficiary of the offending and is said to have obtained \$759,170.46.

[7] The Banks were generally consistent in terms of the documentation they required for a loan. An application signed by the applicant was required with details of assets and liabilities as well as income and the source of income to be completed. Documentation was required to support the representations of income including evidence of employment and of the income earned. Payslips and bank statements were also required to support income claims. Proof of identity was required together with a copy of the agreement for sale and purchase of the property to be mortgaged and evidence that the applicant had sufficient cash, or a deposit as it was sometimes called, to meet the difference between the purchase price and the amount being advanced by the Bank. Sometimes a valuation was required.

[8] A number of Bank officers gave evidence including Mr M K Wayne-Bowles for Kiwibank and Mr A J Naidu, a senior investigator for ASB, both of whom confirmed the Banks would check the information supplied on a mortgage application and if they found any inaccuracies the loan application would be declined. It is reasonable to assume all the Banks followed this process and relied on the accuracy of the information, and had there been any suspicion about the accuracy of the material being supplied, mainly fabricated employment documents, bank statements, and statements supporting the source of income or documents or statements that established the applicant had the cash contribution required, then those applications would have been declined. It is not necessary to be a mortgage broker to know that proposition is self-evident.

[9] The scheme, or more accurately series of scams, began to unravel when on 3 February 2010, following an internal investigation, the BNZ wrote to the South Auckland Police in respect of transactions by Hassan Salarpour and his wife, Ella Ghorbani, Mrs Devoy's sister, for the contemporaneous purchase of 1/3185 Great North Road, New Lynn, Waitakere the loan application for which was dated 17 November 2009, and a proposed purchase by them of 2/160 Mt Smart Road, Onehunga, Auckland. The Bank found that documents, in particular employment details supplied for them, were false and that deposits allegedly held in a current account and a term deposit in another Bank did not exist. The Bank had undertaken enquiries with Kiwibank and ANZ in December 2009 and had found a term deposit number in Ms Ghorbani's name, referred to in the couple's mortgage application to the BNZ, in which there was said to be \$75,000, was false with Ms Ghorbani only holding an overdraft, student loan and credit card with that Bank. The term deposit account belonged to another customer.

[10] Westpac also, at about this time, began to investigate a transaction in relation to 10B Heretaunga Avenue, Onehunga, Auckland, for which it had provided a mortgage advance of \$440,000 on 9 December 2009 to enable Nasrin Kardani and Mohammad Ghorbani, which were two-thirds of Mehrdad Ghorbani's original name, to purchase the property from Nasrin Raisey. The application was forwarded to the Bank by a mortgage broker, Ms Dunn, who owned a mortgage broking franchise in Greenlane. Mrs Devoy referred the transaction to Ms Dunn and supplied the documents and detail necessary to support it. In January 2010 the Bank began to investigate the transaction, having received information from another Bank which had declined an earlier mortgage application

involving Ms Kardani and her partner, Mehran Ghorbani, that the bank statements relied on were fraudulent. Westpac confirmed that themselves, and required Mr Mehrdad Ghorbani and Ms Kardani to repay the loan.

[11] Matters came to the attention of the Serious Fraud Office (“SFO”) when Kiwibank made a complaint to it in November 2011 with respect to various loan applications. That Bank had detected that a number of documents forwarded in support of mortgage applications involving the accused and others were likely fraudulent. For instance, documents in the form of bank statements with Kiwibank were used to support mortgage applications in the names of H Salarpour and E Ghorbani, and M Sarsangi and A Nejad. When the account numbers were subsequently checked by Kiwibank they were found to be invalid. Another bank statement in Mr Salarpour’s and Ms Ghorbani’s name was also found. This was a BNZ statement used to support the purchase of properties and was found to be another false document for an account that did not exist.

[12] A number of the documents were supplied by a mortgage broker named Patrick Pardo. He gave evidence at trial to say that Mrs Devoy referred clients to him and she would forward the documents needed for the mortgage application to him directly, and by facsimile. By checking the facsimile number at the top of these documents the SFO were led to Mrs Devoy, as the subscriber account for the facsimile from which the documents had been sent were in the name of her husband, Mr W P Devoy. He, as it happens, was at the relevant time a mortgage broker. The Crown intended to call him as a witness but he did not give evidence at trial.

[13] Various members of the Police and the SFO executed a search warrant of the residence occupied by Mr and Mrs Devoy and their children at an address in Eastern Beach, Auckland on 27 March 2012. The search revealed a veritable Aladdin’s cave of compromising material in the form of bank statements, loan applications, notes confirming payments of various deposits, a passport and driver’s licence. Many of the documents were forgeries. For instance, there were found the ANZ term deposit statement in the name of Ella Ghorbani showing a balance of \$75,000 and bank statements in the name of H Salarpour and E Ghorbani showing income from Giga Computers Limited (“Giga”) and the Auckland District Health Board (“ADHB”), which documents were false. The documents were identical to those provided in support of applications to the BNZ for

loans. There were several stamps including one from Persian Translation Services and another from the New Zealand Society of Translators and Interpreters Incorporated, with the stamps appearing on documents supplied to various Banks to support loan applications. There was a blank Persian Network Limited receipt numbered 1377, a completed receipt with that number being used to support a mortgage application. There were also a number of documents found as a result of searches of electronic media at the site including computer hard disk drives, lap tops, and a home office PC with documents on them. Many of the documents found in the search concerned copies of correspondence between Mrs Devoy and the mortgage brokers or solicitors concerned in the transactions the subject of the counts in the indictment.

[14] One of the documents found was a note from Warren Devoy to his wife, the accused, entreating her to remain in their marriage and saying:

*“To make it work I promise to totally stop complaining about fraud if you promise to stop talking as if I am the cause of all your problems.”*

[15] Mr Devoy did not give evidence at trial. Mrs Devoy’s explanation for the note was although it was a warning about fraud, it was not meant to concern her but was a reference to her friend Homei Azimi, a real estate agent at Barfoot & Thompson, whose name figured prominently in the defence advanced by most of the accused at trial, and who Mrs Devoy said, had been the subject of various warnings given to her by her husband. She alleged he was concerned about Mrs Azimi’s activities and the risk to Mrs Devoy through association with her.

[16] As will be seen from the reasons given in these verdicts, I have found that Mrs Devoy was very much at the centre of the various frauds perpetrated on the Banks. Mr Devoy had good reason to be concerned about his wife’s activities.

### **Judge Alone Trial**

[17] This matter was tried by me as a Judge sitting without a jury. It occupied ten weeks hearing these charges and there were thousands of exhibits. 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, more recently, *Scutts v R* [2015] NZCA 599. In *R v Eide* (2004) 21 CRNZ 212 at para [21] William Young J, in delivering the judgment for the Court, and with reference to verdicts by a Judge sitting 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 comprehensible 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 be read as a stand-alone document.

### **The Indictment**

[18] The indictment contained 25 counts. Twenty two counts allege obtaining by deception, two allege dishonestly using a document, and one count, count 8, is of using forged documents. The counts which concern the allegations of obtaining by deception, laid pursuant to s 240 of the Crimes Act 1961 ('the Act'), are counts 1 to 7, 10 to 16, and 18 to 25. The two counts of dishonestly using a document are laid pursuant to s 228 of the Act, counts 9 and 17. The forged document count is laid pursuant to s 257 of the Act.

[19] Section 240 of the Act makes it an offence to obtain by deception or cause loss by deception. The counts are framed as obtaining by deception, either in the form of credit in the nature of mortgage advances, or property, being the various residential dwelling houses the defendants are alleged to have acquired.

[20] Twenty two counts concern Eli Devoy, allegedly the ringleader in the offending, and other counts concern her brothers Mehrdad and Mehrzad Ghorbani, who face six and four counts respectively, Mrs Devoy's brother in law Hassan Salarpour, who faces three counts, and Nasrin Kardani, who also faces three counts. Mr Javad Toraby, the other defendant, faces two counts.

## **The Law as it applies to the various counts**

### **Dishonest use of documents**

[21] Counts 9 and 17 are charges of dishonest use of documents which charge Mrs Devoy with the use of documents with intent to obtain a pecuniary advantage, in both instances mortgage advances from Westpac and the BNZ respectively.

[22] The relevant legislative provision is s 228(1)(b) of the Act which creates the offence of dishonestly and without claim of right, using or attempting to use a document with intent to obtain any “property, service, pecuniary advantage or valuable consideration”.

[23] What the Crown must prove, to the required standard of beyond reasonable doubt, in respect of each of these counts is that:

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

[24] Actual use of the document in the sense of physical possession or physically touching the document is not essential.

[25] 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.

[26] Pecuniary advantage was defined in *R v Hayes* [2008] 2 NZLR 321 (SC), 329 at [16] as:

... anything that enhances a person’s financial position. It is that enhancement which constitutes the element of advantage. ...

[27] “Dishonestly” is the subject of a statutory definition under s 217 of the Act, namely:

**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.

The issue of belief as to whether an act or omission may be undertaken is, as was said in *R v Hayes* at para [34], not one that requires the Court to consider reasonableness. The existence of the belief is the subject of the inquiry, not whether the belief was reasonably held or based on reasonable grounds. It is the existence of the belief that matters, not its reasonableness. 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 on the basis of a relevant but mistaken belief.

[28] The Crown must also prove that the accused, Mrs Devoy, in relation to these two counts also acted without claim of right, that being the subject of a statutory definition at s 2(1) of the Act, namely:

**Claim of right**, in relation to any act, means a belief at the time of the act in 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 of any matter of law other than the enactment against which the offence is alleged to have been committed.

[29] As with the element of “dishonestly”, this also has an objective 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].

[30] In *Adams on Criminal Law* the learned authors at CA2.04.02 summarised 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 actually be held by the defendant.

### **Using forged documents**

[31] Mrs Devoy also faces a count of using forged documents, namely count 8 in the indictment. The allegation, which mirrors the wording of s 257(1)(b) of the Act is that she used the documents, knowing them to be forged, as if they were genuine.

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

- (a) knowing the documents to be forged;
- (b) used the documents as if they were genuine.

[33] A forged document is defined by s 256 of the Act as being a false document with those words being the subject of a definition under s 255. The correlation between the three sections was explained in *R v Li* [2009] 1 NZLR 754 (SC) at para [21] as follows:

The introductory words of s 257(1) 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 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 it is not. It is inherently deceptive on its face.

[34] 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 *R v Walsh* [2007] 2 NZLR 109, 115 the Supreme Court said at para [9]:

... the lie must be one or more of the types 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, or fraudulent use of documents, and forgery.

### **Obtaining by deception**

[35] The remaining counts are of obtaining by deception pursuant to s 240(1) of the Act. The counts which relate to the obtaining of property, namely particular residences, are laid under s 240(1)(a), and those which relate to the obtaining of credit, namely mortgage

advances from various mortgagees, are laid under s 240(1)(b) of the Act. The former are counts 3, 10, 13, 16, 18, 20, 24 and 25, while the latter are counts 1, 2, 4, 5, 6, 7, 11, 12, 14, 15, 19, 21, 22 and 23.

[36] The common element between the various forms of offence contained in s 240 is that the accused practised a deception. The word “deception” is defined by s 240(2) as meaning:

- (a) a false representation, whether oral documentary, or by conduct, where the person making the representation intends to deceive any other person and –
  - (i) knows that it is false in a material particular; or
  - (ii) is reckless as to whether it is false in a material particular; or
- (b) an omission to disclose a material particular, with intent to deceive any person, in circumstances where there is a duty to disclose it; or
- (c) a fraudulent device, trick, or stratagem used with intent to deceive any person.

[37] For these counts the Crown must prove, to the criminal standard, the following elements of each count, namely:

- (1) There was a deception amounting to a false representation which led to the obtaining of credit or property;
- (2) the false representation was made with intent to deceive the representee;
- (3) the accused knew that the representation was false in a material particular, or was reckless as to whether it was false in a material particular; and
- (4) was made without claim of right.

[38] The deception can be a fraudulent device, trick, or stratagem used with intent to deceive any person; s 240(2)(c). “Claim of right” is defined in s 2 of the Act as meaning a belief:

At the time of the act in 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 of any matter of law other than the enactment against which the offence is alleged to have been committed.

[39] The deceptions in relation to the counts which concern the obtaining of credit relate to false statements in the loan applications covering, *inter alia*, false income details, failure to declare other mortgages, false bank statements, and the use of names other than the particular accused's current name.

[40] For the counts which concern deceptions that led to the obtaining of real estate, the false representations are alleged to be claims that deposits had been paid, when they had not been, or that payments had been made directly to the vendor, again when no such payment had actually been made.

[41] A representation need not be a written representation, but the Crown is obliged to prove the relevant representation and its falsity; *Carlos v R* [2010] NZCA 248. Silence can amount to a misrepresentation, as can failure to correct a mistaken belief; see *Adams on Criminal Law* at CA240.13.

[42] Where the counts concern more than one accused the Crown proceeded on the basis that they were liable either as principals or as parties pursuant to s 66(1) of the Act as it was alleged they had either committed the offending, aided the principal to commit the offending, or abetted or encouraged any person in the commission of the offending.

### **The Scheme – An Overview**

[43] The overall period of offending covered by the counts was from mid-2007, beginning with the purchases by Mehrdad Ghorbani and his brother, Mehrzad Ghorbani, of residential properties at 23 Glenmore Road, Pakuranga, Auckland, and 10B Heretaunga Avenue, Onehunga, respectively and ended with the applications with respect to 62A Ashby Avenue, Glendowie, in July/August 2010. The last few counts in the indictment concern transactions in 2010 which led to mortgage advances from New Zealand Home Loans and the ANZ with respect to 62A Ashby Avenue, Glendowie, with those transactions having occurred after some of the major Banks, Westpac and ASB, had discovered that fraudulent documents were being used to support mortgage applications to them, and with Mr Mehrdad Ghorbani and Ms Kardani, two of the accused, being interviewed on 9 February 2010 by a Bank officer in relation to their application for a mortgage provided to assist them to purchase 10B Heretaunga Avenue, in late 2009.

[44] In that time properties were purchased, mortgaged, sold and re-mortgaged by various accused using a similar pattern of offending against the mortgagee Banks and with Mrs Devoy playing a key role in each of the transactions.

[45] At the centre of the offending was Mrs Devoy, described by the Crown as being the 'mastermind' of the scheme. She was the link between the accused all of whom, other than Mr Toraby, could be described as members of the Ghorbani clan. Mr Toraby, as with a number of Crown witnesses, was a friend of Mrs Devoy. She used members of her family or Persian migrants to New Zealand, whom she befriended, as purchasers and vendors of the properties as and when required so as to enable several of the properties to remain under the control of the Ghorbani family. Many of the properties, such as 23 Glenmore Road, 1/78 Paihia Road, and 10B Heretaunga Avenue were used by various accused and their families as their residences. Mr Toraby's purchase, however, was in a different category in that it was an acquisition for him, and not for one or other of the Ghorbanis.

[46] Many of the property transactions involved what is colloquially known as 'mortgage ramping'. For the counts involving the initial purchases of 23 Glenmore Road and 10B Heretaunga Avenue, Mrs Dana Omidvar, the mother of Mrs Devoy and her brothers, was used as the initial purchaser. She entered into an agreement for sale and purchase with the family member who was purchasing the property but for a higher price than she was paying for the property, and settlement of both transactions would be effected on the same day. A valuation would be obtained to support the second transaction and mortgage finance would be applied for. The existence of the first transaction involving Mrs Omidvar's purchase would not be disclosed to the mortgagee. The mortgagee would then provide mortgage monies in excess of the original purchase price which would enable that transaction to settle and produce a surplus for the family member selected to be the purchaser.

[47] The Bank would be convinced by the use of false documents that the purchaser for the second transaction was making a cash contribution or deposit, as it was usually described, for the acquisition of the property but that did not occur as the mortgage monies obtained were sufficient to settle the first purchase.

[48] Later, when the mortgages fell into arrears, the properties at 23 Glenmore Road and 10B Heretaunga Avenue were sold for substantially less than that which the purchaser, Mehrdad Ghorbani or his brother Mehrzad, had acquired the property for. The property would be sold to another Persian who had agreed to lend their name to the purchase and had been identified and approached by Mrs Devoy. A mortgage application, with false bank accounts and employment details provided, would then be made and a new mortgage obtained. Again the Bank would be led to believe that the new purchaser had a cash contribution or deposit and was contributing that to the purchase but through the use of various fraudulent and false documents the solicitors acting for the parties and the Bank would be misled and no monies would actually be introduced. This was not always the position as, for example, Mrs Azimi made funds available to purchase a property at 29 Chorley Avenue, Massey, and surplus funds arising from mortgages raised on one property would be used in the acquisition of another.

[49] Shortly thereafter the property would be sold at a much higher price to another purchaser, in the case of 23 Glenmore Road, Mr Mehrdad Ghorbani and his wife as purchasers, using their original names, and for 10B Heretaunga Avenue, Mr Mehrdad Ghorbani, again using his original Persian name, and Ms Kardani, so that the property remained within the control of the Ghorbani family.

[50] As the property was re-purchased for an amount substantially more than that which it had earlier been sold, sometimes under the pressure of a mortgagee sale, more monies were able to be raised against the property by way of mortgage. Again the Bank would be convinced that a cash contribution was being made by the purchaser and the solicitors acting on the transaction would be led to believe that cash contribution had been paid, usually by the device of false documents showing that monies had been paid in Iran, and the mortgage received would be sufficient to re-pay the mortgage raised on the earlier acquisition by the now 'dummy vendor', a person effectively under the control of Mrs Devoy introduced at that point in the chain of sales and purchases where a purchase at a low value was required, so the last transaction would provide a surplus of funds arising for distribution.

[51] In this way Mrs Devoy obtained approximately \$759,170.46 from the various transactions. Others, including Mrs Azimi, also obtained funds from the transactions.



Mrs Azimi was a real estate agent at Barfoot & Thompson. The evidence suggested she worked closely with Mrs Devoy and they had other business interests together. Their roles seemed to be that Mrs Azimi would identify appropriate properties for purchase and Mrs Devoy would handle the applications for mortgages necessary to acquire them. It is those applications and documents provided in support or to convince solicitors and mortgagees that funds were being introduced that are the subject of the counts in the indictment. A large number of documents can be tracked directly to Mrs Devoy who not only lodged applications and provided supporting documents, many fraudulent, to Banks when acting as a broker herself, but also liaised with solicitors both for the vendors and the purchasers and provided documents to them. When not acting as a broker Mrs Devoy tended to direct applications to 'friendly' brokers known to her and provided them with the documents necessary to support the applications, again many of which were fraudulent and were clearly specifically created for the purpose of obtaining the mortgage advances. False details, verified by the documents, would be entered in the mortgage applications.

[52] Although the accused, particularly the Ghorbani family members among the accused, were at great pains to blame Mrs Azimi for the offending none of the documents specified in the particulars supporting the counts appear to have been sent by her to the mortgage brokers, solicitors and Banks and the evidence from the solicitors, mortgage brokers, and the Bank officers who produced the files for the various Banks, was that almost invariably their dealings were with Mrs Devoy. There were one or two exceptions and they constituted no more than an introduction of the prospective purchaser to solicitors by Mrs Azimi, with the dealings between the purchaser and the solicitors or brokers thereafter being conducted by Mrs Devoy. No amount of gainsaying by Mrs Devoy, as occurred in her evidence, can alter the fact that so many of the documentary exhibits lead directly to her. Her defence essentially was that she was merely the 'PA' of Mrs Azimi and where fraudulent and false information was supplied to mortgage brokers, and to the Banks and solicitors by her, she was led into it by Mrs Azimi and honestly believed, at the time, the information to be true. Secondly, unless she had some specific reason for believing otherwise, she accepted the documents she received from her clients, including her family, at face value and simply forwarded them on to the Bank or to brokers and solicitors. These are not explanations, as the verdicts I have returned show, that have any truth to them.

### **The Accused – SFO interviews**

[53] All of the accused, other than Mrs Devoy, as was her right, gave voluntary interviews to the SFO. The interviews, each, several hours long, were recorded on DVD.

#### Mehrdad Ghorbani

[54] Mr Mehrdad Ghorbani was the first of the accused to be interviewed. He purchased 23 Glenmore Road in 2007 from his mother, Dana Omidvar. She had entered into an agreement to purchase the property for \$568,000 and sold it to him for settlement on the same day as her purchase, for \$625,000. A mortgage raised by him from the ANZ in the sum of \$596,718 was sufficient to enable both his mother's and his purchase to proceed.

[55] He discussed the transaction in his interview saying that initially he realised he did not have sufficient income to be able to purchase the property. He was working, at that time, for Access Security Control earning approximately \$600 to \$800 per week, and then as a contractor at other times. He also had income derived from a business that he had with his brother in Iran, but realised that the Bank would not recognise that as a source of income, a policy he described as '*stupid*'. Consequently he was unable to raise the mortgage he needed to be able to purchase the property.

[56] He said that in 2006 he consulted Behrad (Brad) Golchin, an Iranian mortgage broker active in the local Persian community. He said Mr Golchin told him to gather all his money together and pay it into his bank account in the form of regular payments which would suggest to the Bank he had a regular income at the level necessary to support a mortgage of approximately \$600,000. This he did, and obtained a letter from his brother, Mehrzad Ghorbani, stating that he worked for Mehrash Limited, a company owned by him, falsely stating he was an employee earning \$950 per fortnight. He was never an employee of Mehrash Limited.

[57] He had a Persian friend give him money to deposit to support the difference between his own earnings in New Zealand and the figure disclosed to the Bank, and would then compensate that friend by arranging for a payment at an agreed rate to be made to his friend's relatives in Iran. The Bank was thereby led to believe he had a consistent source

of employment within New Zealand providing a level of income that was within the Bank's lending criteria.

[58] The loan application to the ANZ was completed with the assistance of his sister, Eli Devoy.

[59] There were two other transactions involving 23 Glenmore Road.

[60] At some point after he purchased the property he decided to transfer it to his company, Resourceful Engineers Limited. The Bank, rather than consenting to a transfer subject to the existing mortgage, required a new application. That was approved and the loan in the accused's name was repaid, and a new loan advanced to Resourceful Engineers Limited, presumably guaranteed by the accused. Mr Ghorbani, in his interview, disputed that it was a sale, maintaining it was simply a transfer and, when told that the Bank considered it a sale, asserted the Bank was wrong.

[61] There was a signed application in support of the mortgage given to Resourceful Engineers Limited and as part of that loan application he supplied a letter from Mehrash Limited with false income details. Mr Ghorbani accepted that he was not an employee of Mehrash Limited but maintained the quantum of income was approximately correct, although he accepted he did not earn the monies from his brother's company.

[62] Mr Mehrdad Ghorbani's brother, Mehrzad, purchased 10B Heretaunga Avenue, Onehunga, Auckland in August 2007. As with the purchase of the Glenmore Road property the double transaction method was used with Mrs Omidvar, Mehrzad Ghorbani's mother, purchasing the property for \$420,000 and then entering into an agreement for sale and purchase with her son, Mehrzad, to sell the property to him for \$470,000, both transactions settling on the same day. The mortgage advance obtained from the ANZ of \$448,740 was sufficient to enable the transactions to proceed.

[63] Again a loan application was lodged with the ANZ application by Mrs Devoy on behalf of her brother, Mehrzad Ghorbani. Documents supporting the loan application consisted of a letter from Resourceful Engineers Limited, Mr Mehrdad Ghorbani's company, stating that Mehrzad Ghorbani was earning \$62,000 gross, or \$4,116 net

monthly. This was sufficient income to support the loan application but Mehrzad Ghorbani was never an employee of Resourceful Engineers Limited and was never paid the monies stated by that company. Mehrdad Ghorbani accepted he gave the letter to his brother, asserted that the income details were approximately correct as they took into account the monies his brother had access to from their joint business in Iran, but agreed that the monies were not earned from Resourceful Engineers Limited.

[64] Mr Mehrdad Ghorbani was questioned in respect of two other transactions, both concerning the re-purchase of 23 Glenmore Road following its sale by Resourceful Engineers Limited to Roya Nasseri. The sale came about because Mr Mehrdad Ghorbani and his wife fell into arrears on the mortgage and the ANZ threatened a mortgagee sale. Consequently a sale to Ms Nasseri, at a price the Bank would accept, was arranged. The sale price was \$448,000, the vendor being Resourceful Engineers Limited and the purchaser Roya Nasseri. The sale was effected on 2 October 2009.

[65] On 17 November 2009 Mr Ghorbani and his wife, using their original names, Mohammad Ghorbani Sarsangi and Aezamossadat Maddahi Nejad, re-purchased the property for \$628,000 from Ms Nasseri, having obtained a loan in those names in the sum of \$498,000 from the ANZ. The difference between the mortgage advance and the purchase price, the sum of \$130,000 was said by Mr Ghorbani to have been paid privately to Ms Nasseri, the information being relayed to the respective solicitors by Ms Devoy. A cheque for \$130,000 was drawn to Ms Nasseri by Mr Ghorbani, but never presented.

[66] He and his wife also purchased a property at 1/37 Richard Farrell Avenue, Remuera at about the same time, again using their original names. He said that was acquired as an investment property and he borrowed \$75,000 from Mrs Azimi as a short-term loan to assist with the purchase.

[67] At interview, and in marked contrast to his evidence at trial, Mr Mehrzad Ghorbani said his former or "old" names were used by he and his wife as he was concerned were he to use the names by which they were currently known in New Zealand they might be refused a loan. He accepted he did not disclose to the ANZ the arrangement made with Ms Nasseri that the property was sold to her on the basis he could purchase the property

back, and he accepted the statement that he had paid Ms Nasserri \$130,000 was wrong and that he never had those funds to be able to support the purchase.

Mehrzaad Ghorbani

[68] On 24 October 2012, eight days after his brother Mehrdad's interview, Mehrzaad Ghorbani was interviewed at the SFO in Auckland. He faces trial on four counts, counts 1, 2, 3, and 4, together with his brother Mehrdad, and sister Eli Devoy. Two of the counts, counts 2 and 3, concern a property at 10B Heretaunga Avenue purchased by him on 10 August 2007. The other two charges, counts 1 and 4, concern representations, or more accurately misrepresentations, that his brother Mehrdad was a subcontractor working for his company, Mehrash Limited, earning \$4,132.50 net monthly. Those details provided in the form of a letter signed by Mehrzaad Ghorbani were used to support his brother's loan application for the acquisition of the property at 23 Glenmore Road initially by him and later by Mehrdad's company, Resourceful Engineers Limited, that application and the representations contained therein being the basis of count 4.

[69] At interview Mehrzaad Ghorbani said he purchased 10B Heretaunga Avenue in 2008 although the documents produced at trial clearly show the transaction was effected on 10 August 2007. The same type of double transaction method involving his mother was used. Mehrzaad Ghorbani said that he learned the property was for sale from Homei Azimi, a real estate agent employed by Barfoot & Thompson, who was a prominent member of the local Persian community and a close friend of his sister, Eli Devoy. She had the property listed for sale but, notwithstanding the listing with her principal, she arranged for the property to be sold to him by private sale. It was she who suggested, he said, the double transaction method of purchase whereby two transactions were settled on the same day, the second for a higher sum than the first and with a mortgage arranged with the ANZ which produced a sum sufficient to settle his mother's purchase and the subsequent purchase by him, leaving a balance which he said he had used to effect improvements to the property and repay a small existing debt he had with the Bank. The Bank, he confirmed, was unaware of the first transaction involving Mrs Omidvar, described at trial by counsel as the matriarch of the Ghorbani family.

[70] As with his brother Mehrdad's transaction a false document, in the form of a letter signed by Mehrdad Ghorbani under the letterhead of Resourceful Engineering Limited as to Mehrdad's supposed earnings from that company, was supplied to the Bank to support the mortgage application. Mrs Devoy, as with Mehrdad Ghorbani's purchase of 23 Glenmore Road, acted as the mortgage broker and forwarded the mortgage application and supporting documents to the ANZ.

[71] At interview he confirmed he did not have sufficient income from his employment in New Zealand to fit within the Bank's lending criteria. He said he earned approximately \$700 per week at the time and needed to show an additional \$800 - \$900 as income earned in New Zealand to the Bank. He was aware that the Bank would not recognise income earned overseas. Consequently he admitted adopting the same strategy as had Mehrdad Ghorbani and arranged for monies from Iran to be paid to his brother's bank account, and then had those monies paid to him weekly and in regular sums as might demonstrate to the Bank a source of income from his brother's company Resourceful Engineers Limited, consistent with the claimed income derived from that source as an employee. He never worked for Resourceful Engineers Limited. He accepted at interview that he made a mistake saying:

*"I admit I made a mistake. I mean once you do something wrong the result will be wrong."*

[72] At another stage of his interview he denied knowing the scheme was wrong, but later said that "*technically it wasn't right*".

[73] He accepted he did not pay a deposit to effect the purchase of 10B Heretaunga Avenue, his motivation being to obtain a house without having to use his own funds. He agreed that the documentation he supplied to his brother, Mehrdad, to assist him with the purchase of 23 Glenmore Road, namely a letter from Mehrash Limited which he signed, was not genuine and that other than occasional consulting work Mehrdad Ghorbani never worked for Mehrash Limited and did not earn the income from that company stated in the letter.

[74] He also said that he gave his brother Mehran Ghorbani, at his request, a copy of a payslip from Stresscrete, a company for whom he, Mehrzad Ghorbani, worked in 2008 and 2009.

Hassan Salarpour

[75] Mr Hassan Salarpour was interviewed on 12 November 2012. He faced trial on three counts, counts 15 and 16 for which he was jointly charged with Mrs Devoy, and count 11 in which he was the sole accused, Mrs Devoy having earlier pleaded guilty to the count. In his interview he said he reluctantly became involved with Mrs Devoy in the scheme as she asked him to agree to allow he and his wife's names to be used for property purchase. He said he felt under an obligation to her for the assistance she had given them since they arrived in New Zealand.

[76] He accepted that the information supplied to the Bank for the mortgage advance needed to purchase 29 Chorley Avenue was false, in particular that which stated he was working for Giga and earning an income of \$62,500, and that he had \$108,800 in a bank account. The earning details supplied in support of an application to the BNZ for a loan enabling the purchase of 2/160 Mt Smart Road in his name also, he accepted, also contained false details, namely that he worked for Giga, earning an annual income of \$85,000, and that his wife worked for the ADHB, earning an annual income of \$45,000. Both he in his interview, and his wife, Ella Ghorbani in her evidence before the Court, confirmed she had never worked for the ADHB and at the time of the application was working part time as a shop assistant. While accepting that his signature was on several of the documents he denied it was on others. He accepted that he wrote two cheques to a total value of \$46,500 on Mrs Devoy's instruction, the cheques being payable to Nasrin Kardani and which were never presented.

[77] In essence his answers in his interview were to the effect that he was Mrs Devoy's dupe, he trusted her, and he had no intention to deceive anyone.

Nasrin Kardani

[78] Ms Kardani faced three counts at trial, two in relation to the purchase of 29 Chorley Avenue, count 19, concerning representations contained in the loan application to New Zealand Home Loans (Kiwibank) as to her income and Bank funds, a representation which the Crown alleges was false, being the particular for count 20 as to payment of a deposit for that property, and another representation contained in count 18 concerning the payment of a deposit to a ‘dummy purchaser’, Nasrin Raisey, in relation to the sale of that property from Mehrzad Ghorbani to Mrs Raisey. The Crown alleges a deposit was not paid. These transactions were, the Crown allege, orchestrated by Ms Devoy who is jointly charged for counts 18 and 20, and who had earlier pleaded guilty to count 19.

[79] Ms Kardani was interviewed on the same day as Mehrzad Ghorbani, 24 October 2012, at Auckland. At the time of interview was in a relationship with Mehran Ghorbani. She had previously owned a property at 174 Main Road North, subsequently sold to Mehran Ghorbani.

[80] 10B Heretaunga Avenue was purchased by Mrs Devoy’s brother, Mehrzad, in the way described. In July 2009 the property was sold to Nasrin Raisey, an associate or friend of the Ghorbani family. Mrs Devoy and her family were living at the property at the time. By the end of 2009 the property needed to be sold again so it could be re-mortgaged for a larger sum than had been raised to effect the purchase by Mrs Raisey. Consequently Mrs Devoy approached Nasrin Kardani and asked her to be the purchaser of the property with her brother Mehrdad Ghorbani, and a sale was effected to them in December 2009 with a mortgage raised from Westpac in the sum of \$440,000. At interview Ms Kardani explained that she was told by Mrs Devoy that the property was at risk of a mortgagee sale and so she agreed to assist to help the Ghorbani family.

[81] The particular supporting the charge that subsequently arose and which concerned Ms Kardani was a representation made to solicitors acting for the vendor that she, as purchaser, had paid \$100,000 as a deposit when in fact no deposit was paid. At interview Ms Kardani accepted that the deposit had not been paid but said she was asked by Mrs Devoy to write out a document confirming the payment. She said she had been assured by Mrs Devoy that she would not be responsible for the mortgage and that she had



nothing to worry about. For an earlier transaction she had been involved in, namely the purchase of property at Mt Smart Road, she had been told by Mrs Devoy that she was unable to effect the purchase in her own name because she was a mortgage broker, and so she said she assumed the same concern applied. She knew at the time, she said, that when Eli Devoy asked her to sign the document concerning the payment of the \$100,000 deposit, a deposit would not be paid. She said she thought signing the document was simply a formality for the Bank and for the lawyer involved.

[82] The false representation in the loan application by Ms Kardani to purchase 29 Chorley Avenue, Massey, was said to be that she was working for Stylish Home Limited, a company in which Mehrdad Ghorbani was a director and shareholder, and she had an annual income of \$77,500 from that source. At the time her full time job was a shop assistant and she worked part time for Stylish Homes Limited (“Stylish Homes”) selling luminous house numbers on commission. The application, signed by her, also stated she had \$75,000 in Bank funds and a bank statement supporting this was supplied as part of the loan application documentation.

[83] At interview Ms Kardani accepted that she undertook casual commission work for Stylish Home Limited but did not undertake work as a Manager of that firm as the application stated. She said the house was to be purchased for her, unlike 10B Heretaunga Avenue, and she confirmed she did not have Bank funds totalling \$75,000. She said the bank account number used on the statement in her name which showed funds in that amount was not, in fact, her bank account number. She also confirmed that for the purchase of 29 Chorley Avenue a deposit of \$46,000 was not paid, notwithstanding that the Bank was told one was. The difference between the purchase price and the mortgage was \$46,000. The Bank was given a letter signed by her confirming that \$46,000 had been paid to the vendor, Hassan Salarpour’s bank account, which she agreed never happened and was not meant to happen as she did not have the funds for the deposit. She said the Bank was not told the true position because *“I knew that if I do it now they wouldn’t approve my loan”*.

[84] The representations concerning the deposit, which the Crown alleges were false, were the particulars given in support of count 20, the letter being provided to the Bank by Mrs Devoy.

Javad Toraby

[85] Mr Toraby was interviewed at the SFO offices in Auckland on 2 October 2012 and subsequently faced two counts in the indictment, counts 23 and 24, being jointly charged with Mrs Devoy.

[86] He was questioned by the SFO interviewers about a loan application to the ANZ National Bank which provided a mortgage to enable him to purchase 62A Ashby Avenue, and in which it was stated that he held funds in the Parsian Bank in Iran to an equivalent of \$112,000. He accepted that he had no funds with that Bank or, for that matter, any other Bank in Iran. He said he did not know where the information came from that supported that entry in the application, which he admitted signing.

[87] A representation was also made that he had paid \$105,000 to the vendor, Fatemeh Saei, to purchase the property. His explanation was that he believed she was the wife of the true owner of the property, Kourosch Mehraban, another Persian living in Auckland. Mrs Devoy, he said, had offered to negotiate the transaction for him as she said she knew Mr Mehraban. He accepted that a deposit was not paid to Fatemeh Saei as was represented in correspondence provided to the solicitors acting in the transaction by Mrs Devoy but insisted, at interview, that the deposit had in fact been paid by his sending the monies to Iran and they being paid to Mr Mehraban's associates there.

**The Accused's Evidence**

[88] Each of the accused gave evidence in their own defence. They were not of course under any obligation to do so. Further, Mrs Devoy's brother, Mr Mehran Ghorbani gave evidence in support of her and evidence, in the form of character evidence was called on behalf of Mr Salarpour and Mr Toraby. The fact that the accused gave evidence or called evidence does not of course change the burden of proof which remains with the Crown at all times. I remind myself of the directions given to juries when an accused gives evidence, namely that in the event I accept what the accused say in their defence then obviously the proper verdict is an acquittal because the accused will not have done what the Crown says he or she did or have the necessary intention. If I am unsure then again the proper verdict is an acquittal as there will be a reasonable doubt. If, however, I disbelieve

the accused's evidence then I must not leap from an assessment to one of guilt as to do so would, in effect, alter the onus or burden of proof. In that circumstance I am obliged to assess all of the evidence I accept as reliable and see whether the evidence satisfies me of the guilt of the particular accused to the required standard.

[89] All accused, other than Mrs Devoy, made statements that were admitted in evidence. An accused's out of court statements are, of course, only evidence against that accused.

### **Analysis of the Counts**

#### **Count 1 – 23 Glenmore Road, Pakuranga, Auckland**

[90] On 1 July 2007 Dana Omidvar, the mother of Mrs Devoy, and the two Ghorbani brothers facing trial entered into an agreement for sale and purchase as purchaser to acquire 23 Glenmore Road from the vendors, Dairy Global and Jiangwen Lu. The purchase price was \$568,800 and the agreement was for settlement on 20 July 2007. There is no suggestion the vendors were involved in the events, the subject of the allegations.

[91] Approximately a fortnight later, on 12 July 2007 Mrs Omidvar entered into an agreement for sale and purchase for the same property with her son, Mehrdad Ghorbani, also for settlement on 20 July 2007. On this occasion the purchase price was \$625,000.

[92] Mr Mehrdad Ghorbani needed mortgage finance to assist with the purchase and so applied for a loan of \$596,718 from the ANZ disclosing the second agreement to it, but not the first. The Bank was unaware of the significant increase in the purchase price and Mr Mehrdad Ghorbani said he saw no reason to tell them. The reason for not doing so is patently obvious. The scheme of using the Bank's money to buy the property and produce a surplus for Mr Ghorbani would have been exposed and the transaction would not have proceeded as the Bank would not have provided the mortgage. He had initially applied to Kiwibank using Warren Devoy, the husband of Eli Devoy, as his mortgage broker. The Crown alleges that subsequently Mrs Devoy acted as the broker for the successful ANZ application. In any event the advance was made and the transaction settled contemporaneously so that Mrs Omidvar was able to pay the original vendor from the

proceeds of the sale to her son Mehrdad Ghorbani. Through Mrs Omidvar buying for an amount less than she sold the property to her son, a surplus, effectively provided by the ANZ, was achieved. The balance was used, according to Mr Ghorbani to effect repairs and improvements to the property.

[93] To obtain the loan from the ANZ Mr Ghorbani had to supply income details supported by written evidence from his employer. The Crown alleged that the details provided and the documents forwarded by Mrs Devoy to the ANZ in support of the application were false documents so that in effect a false representation was made which deceived the Bank into making the mortgage advance as, had Mr Ghorbani's true employment details and source of his income been known, the application would have been declined. Specifically, the particulars supporting the count refer to a representation that he was a subcontractor working with Mehrash Limited and earning \$4,132.50 (net) monthly and/or \$950 (net) weekly.

[94] In his signed loan application sent to the ANZ by Mrs Devoy on 10 May 2007 he represented his monthly salary from Mehrash Limited was \$4,132.50 net, which amounts to \$953.65 per week net.

[95] Bank statements from the ANZ for Mr Ghorbani were forwarded by Mrs Devoy in support of the application. These showed a pattern of fortnightly deposits of \$950 into the account by automatic payment with the description "*Mehrash Limited wages Mehrash Ltd*". It was not disputed that these entries were false in the sense that Mehrash Limited, a company owned by Mehrzad Ghorbani, was not making these payments as wages, but rather was depositing funds given to it by Mehrdad Ghorbani, which he said he obtained through a business he and his brother Mehrzad had in Iran. Mr Mehrdad Ghorbani's intention was to convince the Bank that monies in that amount were actually being paid regularly to him by Mehrash Limited.

[96] The Crown alleged Mrs Devoy, knowing of the falsity, forwarded the bank statements to the ANZ in support of Mr Mehrdad Ghorbani's application, the document being forwarded by facsimile, with her home facsimile number showing on the fax header. The sender was shown as "W & E Devoy". Supporting the contention that it was Mrs Devoy dealing with the loan application was a handwritten note forwarded on 19 July 2007

to the Bank officer at the ANZ dealing with the matter, referring to proof of the payment of a deposit. For the reasons outlined in para [101] it seems unlikely that a deposit was paid, but a facsimile letter was sent to the Bank on 18 July 2007 by Mrs Devoy purporting to be from her mother, Mrs Omidvar, stating she had received \$2,000 cash from Mehrdad as the deposit. The copy of the signed sale and purchase agreement between Mrs Omidvar and her son was also forwarded. There was no reference to the first agreement.

[97] The documents were forwarded to the Bank by Mrs Devoy in two stages. First, a mortgage application signed by Mr Mehrdad Ghorbani was sent to the Bank on 10 May 2007. In that application Mr Ghorbani disclosed two sources of income, firstly Access Security & Control, and the other Mehrash Limited. In his assets he referred to an apartment he had in Iran and money he held there in the sum of \$50,000. He did not disclose his claimed half interest in the business he said he had under the name 'Arvin', with his brother Mehrzad.

[98] Accompanying that application was the letter from Mehrash Limited dated 7 May 2007 and signed by Mehrzad Ghorbani, but under the name Mehdi Sarsangi, stating that "*Mr Mehrdad Ghorbani is currently co-operating with our company as a sub-contractor engineer and his weekly income amounts to around \$1,190*", a figure Mehrzad Ghorbani in his evidence confirmed was incorrect insofar as it represented any payment from his company, the actual sum paid to his brother as a sub-contractor being considerably less. There was a letter from Access Security, which employed Mr Ghorbani, confirming his weekly wages were \$640 gross. Mr J W Hallwright, a director of Access Security, confirmed that he had given Mr Ghorbani that letter.

[99] On the basis of these documents and the bank statements, showing regular payments of \$950 weekly by Mehrash Limited, the Bank gave pre-approval to Mr Ghorbani to effect the purchase and subsequently, when Mrs Devoy forwarded a copy of the agreement for sale and purchase dated 12 July 2007 between Mrs Omidvar and Mehrdad Ghorbani, confirmed the loan. A further letter was provided by his brother, Mehrzad, on Mehrash Limited's letterhead dated 16 July 2007 and forwarded by Mrs Devoy to the Bank, confirming that Mehrdad Ghorbani worked "*around 24 hours a week with our company*", which Mehrzad Ghorbani accepted was not true.

[100] The agreement had required a payment of a deposit of \$2,000 and Mrs Devoy wrote to the clerk at the ANZ dealing with the matter confirming, on 19 July 2007, that the deposit had been paid. The transaction duly settled on 20 July 2007.

[101] I doubt whether a deposit was paid to Mrs Omidvar. It would hardly make sense within the context of the scheme Mr Ghorbani was attempting to effect for money to be paid in that way. The whole idea was for him to obtain a mortgage advance sufficient to pay his mother's purchase from the first vendor as well as settle his own transaction and produce a surplus for himself to use. Mrs Omidvar's role was that of a 'dummy purchaser' and she was not looking to obtain any financial benefit from the transactions.

[102] In any event, Mrs Devoy did not deny assisting her brothers with their loan applications for the purchase of 23 Glenmore Road, and subsequently 10B Heretaunga Avenue or, at trial, that the income details were false in the sense that the income disclosed was not earned from the source advised to the Bank. Her defence was that she was not aware of this at the time, merely processing the application and accepting the details and letters from her brothers in good faith without having cause to believe they were false.

#### Mehrdad Ghorbani – Defence to count 1

[103] Mr Ghorbani accepted that a letter his brother, Mehrzad, provided him to use to support his mortgage application to the ANZ to purchase 23 Glenmore Road was false in the sense that he did not earn the monies from the source stated. The monies, he said, were partly monies he earned himself including monies he received as a contractor to his brother's company, Mehrash Limited. However, the greater part of the monies referred to in the letter as being earned from Mehrash Limited as income from his supposed employment with it were, in fact, monies received from a business he and his brother said they owned in Iran called 'Arvin'. These monies ultimately found their way into his bank account in the form of regular deposits to create the misleading impression they were earned from the source stated in his signed application and in the letter his brother provided to him. At interview he had confirmed he was not an employee of Mehrash Limited, but made no mention of undertaking contracting work for the company. The reason he gave for adopting what was plainly a plan to deceive the Bank was two-fold. Firstly he was aware, as he said at his interview, of the Bank's policy of refusing to take

into account overseas income which he described as “*stupid policies that the Bank had*”. He also said, compellingly, in terms of the requirement for the Crown to prove deception, that:

*“So when I have a kind of 900, \$900 there so I guess at the time they wanted to know what this income is coming from and the money actually was depositing here in New Zealand so it was almost impossible to tell them this money is actually coming from overseas. So then they ask for additional I guess documentation so we had to actually cover this.”*

[104] Mr Ghorbani admitted at trial that the letter was inaccurate as to the source of income, but maintained that it was accurate as to the amount of income. It is true, as he submitted, that he was not cross-examined on the source of his overseas income and the amount he received, but given the charge is one of obtaining credit from the Bank by deception Mr Ghorbani’s evidence, given both at trial and at interview, that the purpose of the letter was to disguise the source of income as being from Iran, clearly amounts to a deception of the Bank. There was no other reason for the letter to be concocted other than to deceive and circumvent the Bank’s known lending requirements.

[105] Mr Ghorbani submits that the deception in the form of the representation to the Bank that he earned his income from Mehrash Limited, when in fact he did not, was not a material particular, but I reject that. He cannot arrogate to himself the right to determine the Bank’s lending policy and what is important or material to the Bank. He knew it was material to the Bank that the source of income be known and that it not be from overseas. He deliberately misled the Bank over this requirement.

[106] In saying that, I reject Mr Ghorbani’s other contention that he was told otherwise by Mr Behrad (Brad) Golchin, an Iranian chartered accountant, who in 2005 owned a business known as Wise Advice Limited which, in addition to providing accounting services, also contracted mortgage brokers, including for a short time, Mrs Devoy. Mr Ghorbani claimed he met with Mr Golchin at his office in 2006 and was told by Mr Golchin that the Bank did not care where his income came from, provided the level of income was actually stated to the Bank. Mr Golchin denied saying this to Mr Ghorbani and could not remember meeting him. I accept Mr Golchin’s evidence. Mr Ghorbani himself had made enquiries and he knew what the Bank’s criteria was and their refusal to recognise overseas income, particularly income earned from Iran then subject to international sanctions and which

would not have been easy to check. For him to pretend that he received advice to the contrary from Mr Golchin is not credible.

[107] I had no reason to believe that Mr Golchin was anything other than a competent, professional man. He had a mortgage broking business as an adjunct to his accounting business. It would hardly be in his interests to give advice to potential clients as to ways in which they could undermine and circumvent the Bank's policy and I do not believe that he did. He appeared to me to give his evidence honestly, and denied ever having told any client or potential client that they need not provide details in support of a loan that were other than true and correct. The advice allegedly given by Mr Golchin bears similarity, in many respects, to advice subsequently given to Mr Saeed Biparva by Mrs Devoy in relation to a mortgage application by him in 2010 and in which he said he was told to gather all sources of income he could, including his wife's benefits and student loan, and have them paid to his bank account by way of his brother's account to create the impression of regular income from one source.

[108] Mr Ghorbani, in his evidence, said that he had telephone discussions with Mr Golchin subsequent to his meeting with him in which the advice was reiterated. But he never put that to Mr Golchin in cross-examination. He said Mr Golchin told him to get his income from Iran and deposit it into his brother's bank account, and then have that income re-deposited into his own bank account in the form of regular payments. I do not accept that Mr Golchin would have given that advice, which he denied doing in any event. He had little to gain being party to a deception of the Bank and, had it been detected, would, no doubt, have had serious difficulty in maintaining his mortgage broker business and would put himself at risk professionally. I reject Mr Ghorbani's evidence on this issue, and accept Mr Golchin's.

[109] Mr Ghorbani, when he gave his evidence, was combative and argumentative. He refused to admit the obvious as, for instance, he refused to accept that payments being made to his bank account from Mehrash Limited in the way described were to give *the impression* that he was receiving regular income. He was not prepared to accept that it was done to create that *impression* but, plainly, it was designed to lead the Bank to that conclusion. Other examples are his refusal to accept that his scheme amounted to a false representation to the Bank as to the source of his monthly income. Further, he often



became discursive and bombastic in answering questions under cross-examination and at one point, when accused of telling lies, insisted that he was strong, that he did not need to lie, and never lied, yet he also accepted under cross-examination that he had given a false account to the SFO interviewer when, in giving an explanation as to why he and his wife had reverted to their Iranian names in making a mortgage application to assist with the re-purchase of 23 Glenmore Road in late 2009, he said, in a lengthy explanation, that he had met a mortgage broker named Raj, had a meeting with him at McDonalds in Royal Oak, and it was Raj who suggested to him to use his and his wife's previous names, as by then his company had defaulted on the ANZ mortgage obtained in 2007. He said Raj wanted \$10,000 to deal with the application as money would have to be paid to his connections at the Bank. He also said Raj told him that if he used his present names of Mehrdad Ghorbani the Bank might decline to lend to him again.

[110] At trial he accepted this story was a piece of fiction invented, he said, to protect Homei Azimi who he said had suggested to him that they use their Iranian names. In other words, his account given to the SFO, of the meeting with Raj was simply a lie.

[111] I am, of course, conscious of the direction in s 124 of the Evidence Act 2006 concerning judicial warnings about lies in that in a criminal proceeding tried without a jury I must have regard before using evidence that the accused lied, that people lie for various reasons and I must not necessarily draw the conclusion that just because the accused lied he is guilty of the offence with which he is charged. The same consideration applies to other accused where I have come to a conclusion that the accused has not been truthful, in other words that lies have been told. In Mr Ghorbani's case I accept it is likely that Mrs Azimi was concerned, when she knew he and the other Ghorbani family members were to be interviewed, that her name not be 'muddied' through association but it is the acts of the accused that are at issue in the counts in which they face trial. Mr Ghorbani's lies in relation to the discussion with 'Raj' over the use of previous names may well have been lies told to protect other people. The evidence that leads me to conclude that Mr Ghorbani is guilty is not that but rather my rejection of his evidence that Mr Golchin told him of the scheme, and my being satisfied that he knew what he was doing was a deliberate deception of the Bank to avoid being caught by the Bank's policy of overseas income not being taken into account on mortgage applications.

[112] Consequently I am satisfied that each of the elements the Crown is required to prove in relation to count 1, namely obtaining credit by deception in the form of the false representation made as to the source of income to the Bank. Mr Ghorbani knew the representation was false and knew it was material to the Bank as he knew its mortgage criteria. But for that material misrepresentation I am satisfied the loan would not have been advanced and had the Bank known of the falsity in the place of employment it would have declined the mortgage. The elements of the count have been made out to the required standard of proof insofar as Mehrdad Ghorbani is concerned. I reject any defence of claim of right as I am satisfied that Mr Ghorbani well knew that he was not entitled to act in the way he did and only did so to be able to circumvent the Bank's policies which were inconvenient to him.

[113] Accordingly, I find Mr Mehrdad Ghorbani guilty of count 1 of the indictment.

Mehrzad Ghorbani - Defence to count 1

[114] Mehrzad Ghorbani's role in the deception has already been referred to. He provided a letter to his brother to support the earnings details claimed on his brother's mortgage application knowing that his brother was not an employee of Mehrash Limited, Mehrzad's company. Mehrzad's defence was similar to his brother's, namely the reason for obtaining the credit was not the alleged deception and the representation was not false in a material particular, and he did not allow the representation to be made with an intent to deceive or know that the representation was false. In evidence he said he relied on the advice he believed his brother had received from Mr Golchin, although he did not mention it in his interview with the SFO. He did not meet Mr Golchin, other than in social settings, or give evidence to say that he had discussed the supposed advice with him.

[115] He said he had been working with his brother at various times since 1996 and they had business interests together in Iran through a business called Arvin, which at one point generated money for both brothers. He knew himself that the Bank would not take overseas income into account in assessing the income available to applicants to support mortgages. He admitted that in his interview, and also admitted the scheme of disguising the source of the income and pretending that it all came from one source, a company that did not employ the applicant, and did not provide income to the amount claimed, was

wrong, saying “*technically it wasn't right ...*”. He was aware that the strategy of arranging for deposits into Mehrdad's bank account was to make it seem as if the money was being earned from Mehrash Limited when, as he accepted both at interview and at trial, it was not, although at trial there seemed on his evidence to be more sub-contracting undertaken by his brother than was admitted to at interview. However he accepted it did not amount to the monies he was said to have been paid. Given \$950 weekly was being paid to Mehrdad Ghorbani by Mehrash Limited including from the monies received from overseas, and those monies amounted to approximately \$900, then any earnings from Mehrash could not have amounted to much. In any event they were not described in the Bank statements as contract payments, but rather as “wages”.

[116] He also provided false documents to his brother, Mehran, to support his mortgage application to assist with the purchase of 174 Main Road North, Christchurch by stating his brother was earning \$1,500 from Persi Development Limited, a company he owned, when Mehran was not an employee. He pleaded guilty to count 5, the count that followed from that false loan application, as did his brother, Mehran, but in his evidence at trial he resiled from that guilty plea notwithstanding that he had not brought an application to vacate it. That was hardly creditable, and I am satisfied that his evidence in that respect was simply untruthful and given because of the belated recognition that by admitting his guilt in relation to count 5 he undermined his defences in relation to counts 1, 2 and 4 where he had provided false employment details to support mortgage applications, or was assisted by his brother in his own application for a mortgage for 10B Heretaunga Avenue.

[117] I am satisfied that Mehrzad Ghorbani, as did Mehrdad Ghorbani, knew of the Bank's refusal to accept income earned overseas and that it could not be taken into account as income supporting an application. I am satisfied to the required standard that he knew this was a particular material to the Bank. There was no other reason for concocting the scheme of false employment details that the brothers embarked on other than to deceive the Bank and obtain credit. He knew the details on the letter he gave his brother were false as to the source of income, and his brother's employment by Mehrash Limited. He knew those details were material to the Bank as otherwise he would not have embarked, with his brother, on the scheme of deceiving the Bank. I do not accept that his brother was given the advice he claims he was by Mr Golchin. They knew from March 2012 that the SFO was involved, following complaints from the Banks. In the months to interview he and

Mehrdad Ghorbani, I have little doubt, determined to rest their defence on advice Mehrdad Ghorbani was supposedly given by Mr Golchin. That advice, as I have found, was never given.

[118] I am satisfied that the Crown has proved beyond reasonable doubt that Mehrdad Ghorbani obtained credit by deception, and without claim of right, and that Mehrdad Ghorbani knew of the deception and willingly participated in it. He cannot rely on claim of right as I have rejected the evidence of Mehrdad Ghorbani that he relied on Mr Golchin's advice. Mr Mehrdad Ghorbani well knew the scheme was unlawful. He described it as "*technically not right*" and so cannot rely on claim of right. Mehrdad Ghorbani's act in providing what he knew to be a false document, in the form of a letter under Mehrash Limited's letterhead falsely claiming Mehrdad Ghorbani was an employee and earning the income stated in the letter from the company so as to support the figures given by his brother in his loan application, amounted to aiding Mehrdad Ghorbani by assisting or helping him through the provision of false documents. He knew the representations were false and that they were material to the Bank. Without them the loan would not have been approved.

[119] Accordingly I find the Crown has proved beyond reasonable doubt each of the elements of count 1 against Mehrdad Ghorbani and find him guilty as a party pursuant to s 66(1)(b) of the Act.

#### Eli Devoy - Defence to count 1

[120] Mrs Devoy's evidence amounted to acceptance that she forwarded the loan application and supporting documents, including a copy of the second agreement for sale and purchase for 23B Glenmore Road, Pakuranga, and a letter stating that the deposit had been paid by Mehrdad Ghorbani, as purchaser, to their mother, Dana Omidvar. The relationship and the earlier agreement by Mrs Omidvar to purchase the property was, of course, not disclosed as otherwise the Bank may well have tumbled to what was going on. However she said she was not aware of the falsity of the letters and of the income details given on her previous application in a letter from Mehrash Limited supporting Mehrdad Ghorbani's claimed income source. She simply accepted it at face value and said she had no reason to disbelieve her brother's claimed income level or source of employment. She

said she was not in close contact with her brothers at that time. Their relationships, she said, were not unfriendly, it was that they did not often see each other. Consequently her defence was she had not knowingly intended to mislead the Bank.

[121] Mrs Devoy said she was approached by Mr Golchin in late 2005 to work for him in his business, Wise Advice, and assist with mortgage broking and accounting. She gave evidence that she finished working with him in early 2007. His evidence was that she was there for less than a year and he thought might only have worked as a broker for approximately four or five months. I need not resolve that conflict. In any event, after leaving Mr Golchin's employ she and her then partner set up a business called All Baanks which operated as mortgage brokers. Warren Devoy had become a mortgage broker, at one time working on contract with Wise Advice. She said she worked together with Mr Devoy until May 2009 and had a close working relationship with Homei Azimi who referred Iranian clients to her. Her evidence was that she acted as a PA to her partner, Warren Devoy, who undertook the role as a mortgage broker, but I believe she was far more involved in the business than that. In any event, she said her business relationship with her partner ended in May 2009 when he began working as a broker for New Zealand Home Loans. The years 2007 to 2010 were years when she had several pregnancies but nevertheless, as the evidence shows, she was closely involved in mortgage applications for Iranian clients over that period as well.

[122] Mr N K Wayne-Bowles, an employee of Kiwibank dealing with "high risk lending" confirmed that it was the responsibility of the Bank to validate information that had been provided to it, and Mr Golchin, in reply to questions asked of him by Mr Wharepouri, said it was not the responsibility of the broker to authenticate the information but rather simply pass it on in good faith. It would only be if there was some doubt over the accuracy of the information or an obvious need to make an inquiry that the broker would embark on any sort of investigation. That might be true in arms-length transactions but the Crown submission, in the context of her brother's mortgage applications, was that it was not plausible for Mrs Devoy to deny she did not know about her brother's actual employment and the false letter from Mehrash Limited, and that she was a party to their deception of the ANZ.

[123] In their evidence both brothers said that Mrs Devoy was unaware that the statements concerning payments to Mehrdad Ghorbani by Mehrash Limited of a monthly income of \$4,130.50 were false, or that they had set up a scheme to deposit funds into Mehrdad Ghorbani's bank account to support that false representation. They said, as she did, she was unaware of this and had no reason to doubt the truth of the statements in Mr Mehrdad Ghorbani's application or of those contained in the letters provided by Mehrzad under the Mehrash Limited letterhead. Mrs Devoy's evidence was that she trusted her family members and she had no reason to question her brothers over the information. She was aware they had worked together in the past.

[124] I do not accept Mrs Devoy's evidence, or for that matter her brother's, that she was unaware of the falsity of Mehrdad Ghorbani's employment details in his application and in the letter from Mehrash Limited in 2007, and the misleading of the Bank over the depositing of monies into his bank account so as to represent wages regularly paid by Mehrash Limited. She said she only became aware of this later, in 2012, but I do not accept that. Mrs Devoy, by the time the application was lodged, had worked as a mortgage broker for Wise Advice Limited and, notwithstanding her evidence that she was simply a PA insofar as All Baanks was concerned, was clearly taking an active role in the matter.

[125] Her mother was part of the arrangement to get her brother into a house by lending her name to the first purchase of 23 Glenmore Road, She did the same with respect to her other son, Mehrzad Ghorbani, in August 2007, by selling him 10B Heretaunga Avenue, for \$470,000, a property she had purchased for \$420,000, and settled both on the same day. She clearly willingly took on the role as a 'dummy purchaser' to assist her sons in their property acquisitions. This was a family enterprise designed to assist Mehrdad Ghorbani and Mehrzad Ghorbani into homes when they would not have met the Bank requirements relating to income as would have enabled them to obtain mortgages. The scheme of misleading the Bank is one, I am satisfied, which involved not only the Ghorbani brothers, but also their sister Mrs Devoy. She had the requisite knowledge through her involvement in mortgage broking. It was logical for her brothers to turn to her. The scheme was very similar to that Mr Biparva described in his evidence as being suggested subsequently to him in 2010 in relation to his own purchase, by Mrs Devoy.

[126] Mrs Devoy strongly disputed Mr Biparva's evidence, which was given in relation to count 22 of the indictment, but I accept Mr Biparva's account of what he was told by Mrs Devoy. In contrast to her, he impressed me as an honest witness. Mrs Devoy accepted she had no previous connection to Mr Biparva. He had contacted Mrs Devoy as he had seen her advertisements on television. Mrs Devoy suggested, in response to a question in cross-examination as to how it was possible Mr Biparva had got his evidence so wrong, "*that he's been trained by his accountant*" and that she "*didn't teach him anything*". She said it did not make sense for her to make the suggestions Mr Biparva said she did for the sake of a small commission for her husband.

[127] Mr Biparva had no grudge against Mrs Devoy, as she accepted. I accept his evidence as to what he was told by Mrs Devoy. I am satisfied she told him to make payments into his bank account to give the impression of income earned from employment because that was a scheme that had worked well for her in the past, with her brothers for instance. Ms Devoy also pleaded guilty prior to trial to three counts in the indictment prosecuted at trial, counts 11, 14 and 19. These all involved false representations on mortgage applications concerning income details, in the case of count 11 for Mr Salarpour, count 14 for her sister-in-law Melica Nejad (Mehrdad Ghorbani's wife), and in the case of count 19 for a representation concerning an annual income allegedly earned by Nasrin Kardani working for Stylish Homes. Although she disputed some of the other facts relating to these counts she accepted she was aware that the income details for her sister-in-law were false and she had nevertheless forwarded an application to a Bank containing those details.

[128] Consequently I am satisfied that the evidence Mr Biparva said he had of the discussion with Mrs Devoy in which she suggested a way of misrepresenting his income to the Bank, the fact that she had accepted she had forwarded false income details for other applicants to Banks in respect of other counts, the fact that she was repeatedly the one, as will be seen in the analysis of other counts, who forwarded to the Banks concerned in these counts directly, or alternatively indirectly through mortgage brokers, documents and applications which were false, amounts to propensity evidence which I can take into account in considering the case against Mrs Devoy in relation to not only counts 1, 2 and 4, but the other counts in which the same features are present. I am satisfied that the probative value of that evidence outweighs any risk of unfair prejudice. It very plainly is

linked and illustrates a pattern of conduct and evidence of conduct which follow the events with which the accused is charged is admissible as propensity evidence if it assists in proving a propensity to act or have a particular state of mind relevant to the matters in issue; *R v Mata* [2009] NZCA 254 at para [45].

[129] The leading authority in respect of the admission of propensity evidence is the Supreme Court's decision in *Mahomed v R* [2011] 3 NZLR 145 where Tipping J, in delivering the judgment of the majority, at p 151 said:

[3] The rationale for the admission of propensity evidence rests largely, as William Young J says, on the concepts of linkage and coincidence. The greater the linkage or coincidence provided by the propensity evidence, the greater the probative value that evidence is likely to have. It is important to note, however, that the definition of propensity evidence relates to a tendency to act in a *particular* way or to have a *particular* state of mind. It is necessary, therefore, that the propensity have some specificity about it. That specificity, in order to be probative, must be able to be linked in some way with the conduct or mental state alleged to constitute the offence for which the person is being tried.

[130] William Young J, in the judgment of the minority says that common to propensity "*are ideas about coincidence and probabilities*" at p 163.

[131] Overall the evidence leads me to the conclusion that Mrs Devoy assisted her brother, Mehrdad, by providing his signed mortgage application to the ANZ, letters from Mehrash Limited, and a set of bank accounts showing deposits of income in Mr Mehrdad Ghorbani's account which had not been paid to him by Mehrash Limited as wages as the statements suggested. She knew the representation as to the source of income was false and the reason why this information had to be provided was to circumvent the Bank refusal to accept income earned from Iran as part of the income needed to support the loan.

[132] Consequently I am satisfied to the criminal standard of proof that the Crown has proved that Mrs Devoy deliberately assisted her brother, Mehrdad, to obtain credit, namely a loan of \$596,718 from the ANZ by deception by assisting him in the false representations that were intended to deceive the Bank by providing the loan application and supporting material to them. She knew the particular as to the source of income was material to the Bank, she knew the claims as to employment with Mehrash Limited in the mortgage application and the letter from Mehrash Limited, were both false and accordingly in that respect she also is guilty of count 1 as a party pursuant to s 66(1) of the Act.



**Count 4 – 23 Glenmore Road, Pakuranga, Auckland  
Resourceful Engineers Limited transaction**

[133] This count concerns Mrs Devoy and her brothers, Mehrdad and Mehrzad, and a loan of \$597,595.91 from the ANZ to Resourceful Engineers Limited, a company owned by Mr Ghorbani.

Mehrdad Ghorbani – Defence to count 4

[134] Mr Mehrdad Ghorbani, after settling the purchase of 23 Glenmore Road, sought to transfer the property to his company. His evidence was that he wanted to transfer it for tax reasons so that he could run a taxable activity from the property and presumably thereby obtain some taxation advantages. He said he was told by an employee of the ANZ at St Heliers, Auckland, that he needed to apply again for a loan, but in his company name. His defence was that the loan that was advanced by the ANZ on his company's successful application to obtain the mortgage was not, in fact, a new loan but was simply the old loan re-advanced to his company with he and his wife as guarantors.

[135] Mr Ghorbani followed the advice he received from the ANZ employee and a loan application was made on about 11 October 2007 which was forwarded to the Bank by Mrs Devoy. Mrs Devoy accepted she completed the loan application and forwarded it to the Bank on 11 October 2007. The loan application was signed by Mehrdad Ghorbani and the same false representation as the source of income made in the original loan application for the purchase of the property some three months earlier was repeated, namely that Mehrdad Ghorbani earned \$4,132.50 net from Mehrash Limited per month.

[136] The position advanced by the defendants was that the Bank did not, in fact, rely on this loan application in making the new mortgage loan to Resourceful Engineers Limited. They simply treated it as a transfer of the existing loan. Mrs Devoy said in her evidence that she spoke to Rejina Sharma, the clerk at the ANZ who had dealt with Mr Mehrdad Ghorbani's initial mortgage application, and was told that they would disregard the application and supporting documents, which included an agreement for sale and purchase for the property dated 20 September 2007, the vendor being Mehrdad Ghorbani and the purchaser Resourceful Engineers Limited for a purchase price of \$670,000. That, of course, is hearsay evidence but a copy of the agreement for sale and purchase, signed by

Mr Ghorbani, was faxed to the Bank by Mrs Devoy as a supporting document on 11 October 2007.

[137] Consequently the submission on behalf of the defendants was that a new loan did not eventuate, merely a transfer of an existing loan, and so Mr Ghorbani did not obtain credit by deception, the credit having already been obtained on the earlier application.

[138] Insofar as Mehrzad Ghorbani's involvement is concerned, he, knowing it would be used to support the new loan application, provided a further letter under Mehrash Limited's letterhead and signed by him as Mehdi Sarsangi, dated 28 September 2007, advising that his brother, Mehrdad Ghorbani, was "*currently co-operating with our company as a sub-contractor engineer and his weekly income amounts to around \$1,190*". This, as he accepted at interview and also under cross-examination, was incorrect. That document was also faxed to the Bank by Mrs Devoy on 11 October 2007 together with a further letter from Mehrzad Ghorbani supporting the deception as to the place of employment of his brother.

[139] Mr Mehrdad Ghorbani, in support of his contention that this was a transfer of an existing loan, rather than a new loan, pointed to the amount advanced being identical to that originally advanced by the Bank three months previously save for a broken interest payment, and the adjusted term of the mortgage to take account of the fact that three months' payments had already been made as at the date of the application. The evidence of Mr B N Martin of the ANZ was that the Bank appeared to have advanced a new loan on more or less identical terms to the earlier one.

[140] The transaction was not, as Mr Mehrdad Ghorbani submitted, a continuation of the original loan. It was a new loan on virtually identical terms advanced to the new entity, Resourceful Engineers Limited, and the Bank was supplied by Mrs Devoy with the false details contained in the mortgage application and Mehrdad Ghorbani's letter as to source of income. I am unwilling to accept this was a continuation of the existing loan. It was a new loan on similar terms to the earlier one, save for a new borrower and with guarantors. I do not accept Mrs Devoy's evidence that the Bank did not rely on the application and the supporting documents. Very plainly they were relevant to the Bank's decision to approve the new arrangement.

[141] I believe Mr Ghorbani, in signing yet another application with false details as to the source of his income, was deliberately misleading the Bank for the reason he did so to obtain the earlier mortgage. That deception led to the Bank agreeing to, in effect, re-advance the monies it had lent Mr Ghorbani in July to a new entity, Resourceful Engineers Limited. That company therefore obtained credit through the deception. Mr Ghorbani was well aware the representation was false in a material particular, namely the fact that he did not derive his stated income from Mehrash Limited, and he was attempting to conceal that a substantial part of it came from Iran. He cannot say it was made without claim of right because he knew he had no right to deceive the Bank in this way.

[142] Accordingly I find the Crown has proved the elements of this count against Mr Mehrdad Ghorbani to the required standard of proof and find him guilty of the same.

#### Mehrzaad Ghorbani – Defence to count 4

[143] As for Mehrzaad Ghorbani, his defence to count 4 essentially mirrored his defence to count 1, which I have already rejected. He accepted his letters of 28 September 2007 and another of 5 October 2007, used to support the loan application in relation to count 4, were given by him to his brother as updating information. He said he did not discuss the letters with his sister. He accepted in cross-examination that Mehrash Limited was not paying Mehrdad Ghorbani any salary and that the source of his income was from overseas, not from Mehrash. He accepted he provided the letter of 28 September 2007 to his brother knowing it was going to be used in support of the loan application.

[144] Overall, therefore, I am satisfied that Mr Mehrzaad Ghorbani was knowingly providing false information under his company letterhead which he knew his brother Mehrdad Ghorbani would use in the further loan application to the ANZ, the information being false as to the source of his brother's income from Mehrash Limited, and the amount. Therefore he assisted his brother, Mehrdad Ghorbani, to obtain credit for Resourceful Engineers Limited by deception, and the false representation contained in his letters was intended to deceive. Again, Mr Mehrzaad Ghorbani knew his letter of 28 September 2007 was false in a material particular as he was aware the Bank would not take income earned overseas, particularly from Iran, into account in assessing loan applications. He knew the provision of these false details represented in the letter that his

brother was a sub-contractor earning a weekly income from Mehrash Limited of \$1,190 was “*technically not right*”, and so cannot rely on any claim of right.

[145] Accordingly I find the Crown has proved beyond reasonable doubt each of the elements of count 4 against Mehrzad Ghorbani and find him guilty as a party pursuant to s 66(1) of the Act for his act in providing letters, in particular the letter of 28 September 2007 from Mehrash Limited, which he knew was false and which he knew would be provided to the Bank to support his brother’s loan application on behalf of Resourceful Engineers Limited.

#### Eli Devoy – Defence to count 4

[146] Mrs Devoy’s defence to this count is two-fold. Firstly, she claims the documents were never relied on by the Bank because of a conversation she said she had with Rejina Sharma, who did not give evidence at trial. Her evidence that Ms Sharma told her they would not be relied on is hearsay. There was no explanation as to why Ms Sharma could not have been called to give evidence.

[147] Secondly, she maintained she was not aware of the untruthfulness of the representations that her brother worked for Mehrash Limited and earned the amount stated in his loan application from that source. He was a family member. Her evidence was that although she was not particularly close to him at that time she had no reason to doubt what she was told, and so simply forwarded the documents on. Consequently, she submits it has not been proved beyond reasonable doubt that she had an intention to deceive as she did not know the representations were false.

[148] I have already rejected Mrs Devoy’s defence of lack of knowledge, and therefore not having knowingly intended to mislead the Bank in my discussion of count 1. The same reasoning applies to my rejection of her contention that she was unaware of the untruthfulness of the representations concerning wages allegedly paid to her brother, Mehrdad Ghorbani, by Mehrash Limited and the attempt to disguise the source of his income from the Bank. She was willing to participate in her brother, Mehrdad’s, attempt to mislead the Bank and thereby circumvent the Bank’s policy of not taking into account income earned from overseas, particularly from countries such as Iran. That policy, I

accept, would have been frustrating not only to the Ghorbani family but to many other migrants from that country, nevertheless it was the Bank's policy and it was for it to determine what criteria would be applied in assessing loan applications.

[149] I reject her evidence of an absence of knowledge of the deception, and given she accepted she forwarded the application to the Bank she clearly knew that the representation as to the source of Mr Ghorbani's income was false. I also reject her hearsay contention that the application was not relied on by the Bank. Her role in the enterprise was to assist Mr Ghorbani in obtaining a loan to Resourceful Engineers Limited so that the property could be transferred into that name.

[150] Accordingly in that respect the count has been proved against her to the criminal standard, beyond reasonable doubt, so she is also guilty of count 4 as a party pursuant to s 66(1) of the Act as I am satisfied she cannot assert any claim of right given that her training as a mortgage broker and, no doubt her discussions with her brothers and other members of the Iranian community, would have equipped her with the knowledge that this was a scheme to mislead the Bank and circumvent the Bank's requirement.

### **Counts 12 and 13 – 23 Glenmore Road, Pakuranga, Auckland**

[151] By October 2009, Mr Mehrdad Ghorbani's financial position had deteriorated. At trial he said he was no longer in receipt of the income he had been receiving from 'Arvin' in Iran. That business had been sold and the proceeds of sale lost in a failed business venture in Iran. Mehrdad Ghorbani gave some evidence of that and he said it led to an estrangement with him and his brother as he was blamed for the loss of the funds. Consequently, Resourceful Engineers Limited, being the registered proprietor and mortgagor, was in default under the mortgage and Mr Ghorbani and his wife were clearly at risk of being called upon by the ANZ under the guarantees given to support the mortgage. The Bank was moving to a mortgagee sale and so a plan was hatched for the property to be sold to a 'dummy purchaser', in this case Roya Nasser, a fellow Persian who was friendly with the Ghorbani family, and for the property to be subsequently re-purchased by Mr Mehrdad Ghorbani and his wife.

[152] The particulars for count 13 allege that Mr Ghorbani represented that he had paid a deposit of \$130,000 to Ms Nasser so as to re-purchase the property at 23 Glenmore Road.

The particulars for count 12 concern the use by Mr Ghorbani of his original names, Mohammad Ghorbani Sarsangi, and that of his wife, Aezamossadat Maddahi Nejad as the purchasers of the property. This, the Crown submitted, was done to disguise the fact that they had previously been associated with the default that led to the mortgagee sale process initiated by the Bank. They had both changed their names by Deed poll prior to the mortgage application, Mehrdad Ghorbani on 24 April 2006 as previously noted, and his wife Aezamossadat Maddahi Nejad, also known as Melica Nejad, to Melica Ghorbani, on 10 February 2008.

[153] Mehrdad Ghorbani and Mrs Devoy are both jointly charged under counts 12 and 13. The property at 23 Glenmore Road was sold for \$448,000 under an agreement for sale and purchase dated 18 May 2009. The original purchaser had been Shirin Hajalipashaie but Ms Nasserri became the purchaser under a Deed of Nomination dated 17 August 2009. Settlement was on 2 October 2009. At that time the vendor, Resourceful Engineers Limited, owed approximately \$600,000 to the ANZ, as Mr Ghorbani admitted in his interview. Ultimately, as the evidence of Ms Patricia Ballantyne demonstrated, the Bank suffered a loss of \$306,731.50 through the company default and subsequent civil action which led to the company being placed into liquidation.

[154] To facilitate the purchase by Ms Nasserri a mortgage was arranged for \$358,000 from Sovereign to enable Ms Nasserri to effect the purchase. The property was then sold to Mr Ghorbani and his wife, using their original Iranian names, by agreement for sale and purchase dated 2 November 2009, the agreement having been entered into a month after settlement of the sale of the property to Ms Nasserri and for settlement on 17 November 2009. The purchase price for the re-purchase by Mr Ghorbani and his wife was \$628,000. The mortgage application to the ASB was supported by a registered valuation giving a valuation of \$650,000 for the property.

[155] Accordingly for the second transaction Mr Ghorbani and his wife borrowed \$498,000 from the ASB. The mortgage application was lodged by Mr S Khurana of Rooster Mortgages Limited, a financial advisor, who was known to Mrs Devoy, and who had referred the Ghorbanis to him. She provided, by facsimile, the documentary information that was required to support the application.

[156] Mr and Mrs Ghorbani remained residing in the house at all times as Ms Nasserri never took possession. It was never intended that she would, she simply being used as a 'dummy purchaser' to enable the Ghorbanis to avoid losing their home as a consequence of a mortgagee sale.

[157] There were a number of false details contained in the mortgage application that was forwarded by Mr Kharuna to the ASB. The signed mortgage application itself and the supporting documents were received by him from Mrs Devoy as part of a 66 page fax on 28 October 2009. The information that was false in the mortgage application, signed by Mr Ghorbani and his wife using their original Iranian names, was that he was earning \$85,000 as an engineer with Access Security & Control, his wife was earning \$45,000 working for the ADHB, and they had a deposit of \$185,000 with the ANZ. Mrs Devoy's position was that she forwarded the documents but did not know they were false save for the reference to Mrs Ghorbani's income. Mrs Ghorbani was a student at that time and not working and she accepted she knew that was false, and so pleaded guilty to count 14 which relates to the purchase of a property at 1/37 Richard Farrell Avenue, Remuera, by Mr Mehrdad Ghorbani and his wife using their former names, at about the same time the application was made for a mortgage to the ASB to enable Mehrdad Ghorbani and his wife to re-purchase 23 Glenmore Road.

[158] The same information was provided in the mortgage application to Southern Cross which advanced monies to enable the purchase of 1/37 Richard Farrell Avenue to proceed. When cross-examined in relation to count 14, Mrs Devoy accepted she was aware the details concerning her sister-in-law's earnings were incorrect, in other words false, but was not sure about the deposit of \$185,000 in the ANZ account, although that was one of the particulars of count 14, to which she had pleaded guilty, saying that she believed Mrs Azimi had deposited those monies into her brother's bank account. I do not accept that and the proposition was not put to Mrs Azimi in cross-examination.

[159] As for Mr Ghorbani, he accepted his signature appeared on the loan application forwarded to the ASB by Mr Khurana in relation to the re-purchase of 23 Glenmore Road, but said he was unaware who had filled out the details in the application. The figures were plainly concocted by Mr Ghorbani and his sister, Mrs Devoy, and inserted in the mortgage application and provided to Mr Khurana to forward to the ASB. Forged payslips for

Access Security and the ADHB were also sent by Mrs Devoy to Mr Khurana as part of the large facsimile already referred to. The payslips were in the couple's former names. Mr Ghorbani had been employed by Access Security and Control as an electrical engineer in 2007 but by 2009 he had left the company's employ and instead contracted to it through his company Resourceful Engineers Limited. Mr Hallwright, a Director of Access, confirmed that in the calendar year for 2009 Mr Ghorbani's company had earned \$45,750.58 from Access. He said he had never heard of M. Ghorbani Sarsangi, the name on the payslip purportedly from his company, and said the payslip was not issued by his company. He knew the accused as Mehrdad Ghorbani.

### **Count 12 - Use of Mehrdad Ghorbani and his wife's original Iranian names in a mortgage application**

[160] The specific count, count 12, specifies as its particular the use by Mr Ghorbani and his wife of their original Iranian names in applying for the loan to purchase the property.

[161] Mr Ghorbani was asked about this at interview. He discussed his financial problems, saying that they had come about because of a dispute he had with the Inland Revenue Department, and said that he had also come under financial pressure because a friend who was involved in the running of his company in Iran had decided to go to Canada in 2008, and so he was no longer earning the income he had previously and was finding it difficult to support the mortgage. He said he approached Mrs Azimi and was able to arrange for her friend Roya Nasserri to act as a 'dummy purchaser' to help him "save the house". He accepted he applied for a mortgage with ASB under his original Iranian name and did not tell the Bank that he had earlier owned the property under his new name. He told the SFO interviewers, in relation to the use of his former name, that:

*"Mehrdad Ghorbani and Resourceful Engineers actually were linked together and I was thinking that if the ANZ Bank knows that I was a person that I wasn't actually able to you know make payments on time and my, they force me to sell the house so definitely I cannot go and apply for a loan again"*

[162] He then said that he spoke to his sister, Eli, about the matter and she suggested he use a mortgage broker known as 'Raj'. The invented story of 'Raj' has been referred to previously in this verdict in relation to count 1. 'Raj', he said, suggested to him not to use the name Mehrdad Ghorbani again as the name of the purchaser as the ANZ may have



circulated his default under that name to the other Banks and so he said 'Raj' told him to use his original names in the hope that the earlier issues he had with the ANZ would not be discovered by the ASB.

[163] At trial his evidence changed. He admitted to the invented story of 'Raj'. But this time he asserted it was Mrs Azimi who asked him to use his original names for the purchase of the property at 1/37 Richard Farrell Avenue, which he asserted was a transaction in which he and his wife were acting as the 'dummy purchasers' for her. Mrs Azimi was worried that if he and his wife used their current names of Mehrdad Ghorbani and Melica Ghorbani, there might be an issue that would arise from a credit check. Mrs Azimi denied saying this when cross-examined by Mr Mehrdad Ghorbani. At trial he accepted he had given the reason for using his and his wife's former names to try and disguise their identity when the Bank application was made, fearing that otherwise it would be declined, but said that was because of what he had been told to do by Mrs Azimi.

[164] Notwithstanding his earlier admissions to the SFO interviewers, he denied knowing anything about the mortgage application for the purchase of 23 Glenmore Road, save that he accepted he and his wife's signatures appeared at the foot of the application. He accepted that the information contained in the application with reference to his and his wife's income and the deposit of \$185,000 in the ANZ were all false, but said he did not know who had inserted that material. Given that it was faxed to Mr Khurana by Mrs Devoy, and he accepted both he and his wife signed the application, I do not accept his evidence. He was, I am quite certain, aware of the false representations in the application, as was Mrs Devoy. She admitted she was at least aware of one false representation in relation to Mr Ghorbani's wife's income, but as Mehrdad Ghorbani accepted at trial the statement of his income was also false, as was the stated Bank deposit and she must have known these details were false also.

[165] Mrs Ghorbani's fake pay slip showing her as an employee of the ADHB earning \$45,000 annually, which was one of the documents faxed to support the ASB loan application to which count 12 relates, was also used in another application to Kiwibank. That Bank wrote to Mrs Ghorbani on 28 February 2012 asking about that pay slip and other false payslips that had been used. Mrs Melica Ghorbani, Mehrdad Ghorbani's wife, wrote in reply:

*“I have to admit that I should not have listened to my husband’s advice because that was his idea to put in information about the previous job although I never worked at the Auckland District Health Board. He was helping me with filling in the application at the Kiwibank. I regret my mistake”*

[166] Mrs Melica Ghorbani did not give evidence but when asked about the email Mr Mehrdad Ghorbani, once again, raised the by now predictable response, that his wife was really referring to advice she received from Mrs Azimi rather than him. He was accordingly suggesting that his wife would prefer to make a false accusation against her husband rather than name Mrs Azimi, which I do not accept.

[167] Overall, therefore, I am satisfied that the use by Mr Mehrdad Ghorbani and his wife of their original Iranian names was made with the intention of deceiving the ASB. His reason for doing so was well enough explained to the SFO interviewers, an explanation he accepted he gave them. I do not accept he was told to do that by Mrs Azimi although it may have been discussed with her or even raised by her. He signed the application and he and his wife made the decision to use their former names as those names had a ‘clean’ credit history attached to them. He and Mrs Devoy well knew that if the name Mehrdad Ghorbani and/or Melica Ghorbani was used there was a risk the ASB would discover they were the guarantors of the loan to Resourceful Engineers Limited which was in default to the point where the ANZ had engaged in a mortgagee sale process. There really is no other inference that can be satisfactorily drawn.

[168] Insofar as Mr Ghorbani is concerned, an inference is not necessary as he admitted the obvious in his interview with the SFO, and also in his evidence, save that in his evidence he attributed the idea to Mrs Azimi, saying also that he was confident that it would make no difference as the Bank would in all probability discover the earlier name on a credit check. I do not accept that Mr Ghorbani knew that at the time. His reason was well enough explained to the interviewers.

[169] Count 12 is satisfactorily proved to the required standard of proof insofar as it concerns Mehrdad Ghorbani in that the deception of using Mr Ghorbani and his wife’s original names from Iran led to the obtaining of credit in the form of a mortgage advance. Had their new names as recorded in the Deed polls been used then it was possible the ASB would have declined the application. The representation was plainly made to deceive the ASB and avoid the risk of the loan being declined, and was false in that the Ghorbanis had

changed their names by Deed poll, thereby disclaiming the use of their earlier names. It was clearly a material fact for the Bank that their credit history be known and the use of names Mr Ghorbani and his wife had renounced was simply a ruse to ensure that material particulars were disguised from the Bank.

[170] As Mr Duff noted in his submissions, s 21A(3)(a) of the Births, Deaths, Marriages and Relationships Registration Act 1995 requires a person making a statutory declaration in support of an application to change his name to abandon the name registered at birth. Consequently Mr Ghorbani knew that the use of the original Iranian names amounted to a representation that was false in a material particular, and was accordingly made without claim of right. His defence was essentially that he did not make the representation as he was unaware of the content of the application, his agreement to the use of his old name, he submitted, was in relation to the purchase of 1/37 Richard Farrell Avenue. He said the re-purchase of 23 Glenmore Road “*was unexpected*” and that he had nothing to do with the information supplied. I do not accept that. There were two mortgage applications, although in identical detail, one for 23 Glenmore Road and the other for the Richard Farrell property and both made at about the same time. Mr Ghorbani seems to suggest that the one intended for the Remuera property was inadvertently used in the application relating to the re-purchase of 23 Glenmore Road. I do not accept that, and I accept the explanation he gave to the interviewers that the use of the Iranian names was an attempt to deceive or mislead the Bank as otherwise the earlier defaults might be discovered. Consequently the Crown has proved this count against Mr Mehrdad Ghorbani to the required standard of proof and he is guilty of the same.

[171] As far as Mrs Devoy is concerned I have no difficulty finding that she forwarded the application to Mr Khurana containing the various false representations I have outlined, and knowing that they were false. However, the count relates to the use of the original Iranian names. She said in evidence those names were their names. I accept Mr Duff’s submission that she could not be expected to know of the disclaimer contained in the Births, Deaths, Marriages and Relationships Act 1995 referred to above. Mr Ghorbani told the interviewers that the idea of using the original Iranian names was Mrs Devoy’s, but that is not evidence against her as it was made by a co-accused and in circumstances where she was not present. In his evidence at trial he accepted he had told the interviewer that, he

insisted that the person who told him to use he and his wife's former names was not Mrs Devoy but rather Mrs Azimi.

[172] I agree that I cannot exclude the possibility that Mrs Devoy believed her brother and sister-in-law were entitled to use their Iranian names even though she must have known it would lessen the chances of the ASB discovering their connection to the earlier mortgage default to the ANZ. There is no evidence to suggest she even knew that Deed polls had been executed by them prior to the mortgage application. I do not accept that her evidence that Mehrdad Ghorbani and his wife had no other loans in their names was untruthful in the sense that she knew that not to be so. The original loan Mehrdad Ghorbani and his wife had in relation to the purchase of 23 Glenmore Road had been repaid when the property was transferred to Resourceful Engineers Limited. It was that company which had a loan or mortgage to the ANZ and was in default. Mr and Mrs Ghorbani guaranteed the loan, however there was no evidence that, as at the date of the application to re-purchase the property using the ASB the Bank had called upon the guarantees.

[173] Consequently I accept that as against Mrs Devoy she may not have believed a false representation was being made by use of the old names so that count 12 has not been proved against her beyond reasonable doubt, and she is accordingly acquitted of the same.

### **Count 13 - 23 Glenmore Road, Pakuranga, Auckland**

[174] This count, again preferred under s 240(1)(a) Act is one for which Mrs Devoy and Mehrdad Ghorbani are jointly charged. The count concerns the obtaining of property, namely 23 Glenmore Road, by deception, the particulars being that Mehrdad Ghorbani had paid Roya Nasserri a deposit of \$130,000 to purchase the property.

[175] As explained previously, Roya Nasserri agreed to be used as the 'dummy purchaser' for 23 Glenmore Road to protect the property for Mr Mehrdad Ghorbani and his wife in the face of threatened mortgagee sale proceedings by the ANZ. She gave evidence and said she was approached by Homei Azimi, whom she described as her best friend, and who told her about the problems with the property, saying to her that Mrs Devoy needed her help. She agreed, she said, to act as the purchaser. She said the reason it was subsequently sold

to Mr Ghorbani and his wife was that she insisted, after a few months, that the property be transferred out of her name.

[176] Although her evidence was at times unclear on the point, I am satisfied that Mrs Azimi introduced her to a mortgage broker, Ms Sarah Shaith, who was able to arrange a mortgage with Sovereign that enabled the purchase from Resourceful Engineers Limited to proceed. A Deed of Nomination was entered into at a solicitor's office called the 'Property Law Centre'. It is the Crown's position that Ms Nasserri was taken there by Mrs Devoy. Certainly Ms Nasserri initially gave evidence of that but under cross-examination accepted the possibility that it was Mrs Azimi who had taken her to the solicitor for the purpose of signing the Deed of Nomination by which she became the purchaser of 23 Glenmore Road. There was some support for the proposition that it was Mrs Azimi who took Ms Nasserri to the Property Law Centre from the notes of Sheryl Landon, a legal executive, which were referred to in evidence, one of which stated the "*purchaser is a friend of the land agent. All communication through Homei Azimi as purchaser doesn't speak or understand English too well*". Consequently I think it more likely than not that it was Mrs Azimi who introduced Ms Nasserri to Ms Landon for the purpose of having Ms Nasserri sign the Deed of Nomination. That is consistent with the evidence of Ms Nasserri that Homei Azimi and Eli Devoy worked with each other, which is also consistent with evidence given by other witnesses, both Crown and the accused themselves. However it is Ms Devoy's role in the subsequent sale to Mr Ghorbani and his wife using their former Iranian names that is relevant to this count.

[177] Mrs Devoy, as I said in my analysis of count 12, actively participated in the raising of the mortgage with ASB that enabled her brother and sister-in-law to re-purchase their home. I have already described her referring them to a mortgage broker, Mr Khurana, and forwarding the documents including documents that were patent forgeries to him, who received them and used them to support the successful mortgage application. I have no doubt that Mrs Devoy was actively involved in this. She was the one undertaking the forwarding of documents to ensure that her brother and sister-in-law received the mortgage they needed. I reject her evidence that she simply acted as a 'PA' to Homei Azimi over the provision of documents to the mortgagee through Mr Khurana, the mortgage broker. The evidence is overwhelming, not only because of the clear inter-related offending in relation

to other counts, but also because she was clearly anxious to assist her brother and sister-in-law in the retention of their home.

[178] The agreement for sale and purchase entered into by Ms Nasserri with the Ghorbanis under their former names provided for a purchase price of \$628,000 for settlement on 18 November 2009, and with a deposit of \$10,000 to be paid to the vendor's solicitors. Those solicitors were a firm operated by the late Shean Singh. The purchaser's solicitors were described as Millers Barristers [*sic*]. As the mortgage advance from ASB was \$498,000 the difference of \$130,000 had to be paid in cash. To get around the obvious difficulty that Mr and Mrs Ghorbani had no cash contribution the solicitors, and hence ultimately the Bank, needed to be convinced that these monies had been paid privately to the vendor, Ms Nasserri.

[179] Consequently, a cheque for \$130,000 was drawn on Stylish NZ Limited's bank account with the BNZ with Ms Nasserri as the payee and dated 10 November 2009. The cheque was signed by Mehrdad Ghorbani, who was a director of Stylish NZ Limited. That company had been established in 2009 by Mr Ghorbani and Aiguo Pan, who gave evidence for the Crown. Mr Pan had no knowledge of the cheque but said that Mr Ghorbani held the company cheque book. Further, he said the balance of the bank account in 2009 would not have been more than \$2,000 - \$3,000 at any given time, the company not having been particularly successful. Unsurprisingly the cheque was never presented, for there was never any intention that it would be, as plainly it was intended that the solicitors would be misled, as they were, into believing that the monies had been paid.

[180] A typewritten document dated 10 November 2009 confirming receipt of the cheque of \$130,000 was prepared and purportedly signed by Ms Nasserri, and witnessed by Zohreh Sadeghi. That is part of Mrs Azimi's Iranian name. Her full Iranian name prior to marriage was Zohreh Sadeghi Jarkani. Azimi is her married surname. Ms Nasserri denied signing that document. Mrs Azimi, in answer to a question put to her in cross-examination by Mr Mehrdad Ghorbani, denied witnessing the document. Yet the document, which Mrs Devoy said she knew nothing about, was sent to Mr Singh at 40 minutes after midnight on 16 November 2009, as it was one of a number of documents sent on that occasion, including a handwritten note addressed to Mr Singh confirming receipt of the deposit from the purchaser of the property, and signed 'Roya'. Clearly that was intended

to lead Mr Singh to believe the document was signed by Roya Nasserri, but it was not. Mrs Devoy admitted signing it and faxing it. She said she was asked by Roya Nasserri to send it on her behalf. It was not signed *pro tem*. It was not put to Ms Nasserri that she authorised the sending of the note, or asked Mrs Devoy to sign it as if it were her. If Mrs Devoy accepted she faxed that letter then she faxed the other letters to Mr Singh that were clearly part of the same batch sent from her home at 12.40 am on 16 November 2009. Consequently there is ample evidence that it was Mrs Devoy, and not Mrs Azimi, who made the representation that the deposit of \$130,000 had been paid.

[181] On 14 November 2009 an email was sent by Mr Ghorbani's solicitors to the vendor's solicitors relaying advice that their client said he had paid \$130,000 by partial payment/deposit and seeking an amended settlement statement. A solicitor at Mr Singh's office subsequently wrote by email, on 16 November 2009, to confirm receipt of the deposit and a settlement statement was issued by Mr Singh on 16 November 2009, crediting \$130,000 to the purchaser and seeking on settlement, after adjustments for rates and the Regional Council levy, the sum of \$499,146.05 which was duly paid.

[182] Further confirmation of Mrs Devoy's role in deceiving the solicitors over the supposed payment of a deposit of \$130,000 is contained in another of the documents in the sequence of documents sent at 12.40 am on 16 November 2009 to Mr Singh, the vendor's solicitor. There was a typewritten letter in which Ms Nasserri purported to acknowledge receipt of the cheque of \$130,000 and stated that the amount had been cleared into her Bank "*yesterday, Friday 13 November 2009*", the letter being dated 14 November 2009. On that faxed letter Mrs Devoy confirmed she wrote a handwritten note addressed to Mr Singh, confirming the amount required to settle would be \$499,146.05. Ms Nasserri said in her evidence that she had not signed that letter. As it was sent to Mr Singh from what was clearly a facsimile in Mrs Devoy's home at 12.40 am, although by then the heading 'W & E Devoy' had been removed, the letter and her handwritten note further implicate Mrs Devoy in the fraud.

[183] Overall, therefore, I am satisfied that as against Mrs Devoy the Crown has proved beyond reasonable doubt that she made the representation to the solicitors, specifically Mr Singh, that a deposit of \$130,000 had been paid, knowing that it had not. She said she knew nothing about the transaction but then also said in her evidence that she believed the

deposit had been paid based on what she said she had been told by Mehrdad Ghorbani and Ms Nasserri, but Ms Nasserri said at trial she paid no monies for the purchase of the property.

[184] Mrs Devoy made the representation as to payment of a deposit knowing it was false, and with the intent of deceiving the solicitors over payment of the cash contribution to the purchase which was described as a deposit. The intention in doing so was to ensure that her brother and his wife were able to re-purchase their property. She knew the representation was false and that the particular, namely payment of \$130,000, was material as it led the solicitors to believe that the full price specified in the contract would be able to be paid on settlement with the balance from the proceeds of mortgage. It was made without any claim of right. Accordingly I find her guilty of this count.

[185] As for Mr Ghorbani, he submitted the representation was not false in a material particular as the deposit had been paid and so he did not intend to deceive. As mentioned earlier he said he knew nothing about the mortgage application, a proposition I reject. Although he accepted the cheque was not presented, he said that \$130,000 was paid by a number of earlier payments being made to Ms Nasserri's bank account. He said he paid the \$10,000 deposit the contract required in relation to the purchase by Ms Nasserri of the property from Resourceful Engineers Limited, and that ought to be taken into account, and the other payments he made to her amounted to \$85,000. He agreed he rang the solicitor acting for him on the re-purchase of 23 Glenmore Road and confirmed that the deposit of \$130,000 had been paid. There was also, he said, a further \$32,000 paid by him to Ms Nasserri to assist her with the purchase of an investment property. His explanation for writing the cheque out and signing it was that Mrs Azimi asked him for this so it could be shown to Ms Nasserri's lawyer to convince him that payment had been made. He said he gave Mrs Azimi a photocopy of the cheque, and not an original document. He said that was a common practice in Iran.

[186] These propositions were denied by Mrs Azimi. I accept her evidence as clearly it was Mrs Devoy and Mr Ghorbani who were involved in this transaction. It was solely for Mr Ghorbani and his wife's benefit. While Mrs Azimi may have assisted in identifying Ms Nasserri as the prospective 'dummy purchaser', she had little further role in the matter other than attending on Ms Nasserri at the time of execution of the Deed of Nomination. I



accept her evidence that the payment made to her from the surplus of funds that arose after the re-purchase was the repayment of a loan made earlier by her to Mrs Devoy.

[187] Mr Ghorbani, when cross-examining Ms Nasserri, never put to her that he had made these payments to her and she was clear in her evidence, which I believe, that she received no monies for the property. I am satisfied that he did not and her role was, as she said, and as he agreed in his interview, merely to act as a ‘dummy purchaser’ to avoid the consequences of a mortgagee sale and then transfer the property back to Mr Ghorbani and his wife when the opportunity arose. Consequently I am satisfied that on this count also the Crown has proved the elements of the count to the required standard, beyond reasonable doubt, that Mr Ghorbani in making a representation to his solicitor, Mr Miller, which he admitted doing, that he had paid \$130,000 to Ms Nasserri when he had not, and his signing a cheque for \$130,000 which was forwarded to Mr Singh by Mrs Devoy as one of the documents faxed at 12.40 in the early morning of 16 November 2009, did so with intent to deceive the solicitors over the payment of the monies which he knew was material to the transaction, as had the solicitors not believed the monies had been paid there would not have been sufficient funds to settle the re-purchase of 23 Glenmore Road. Accordingly, he obtained the property by deception and the deception was made without claim of right. He is guilty of this count.

### **Counts 2 & 3 - Mehrzad Ghorbani’s purchase of 10B Heretaunga Avenue, Onehunga**

[188] At about the time that his older brother, Mehrdad Ghorbani, purchased 23 Glenmore Road, Mehrzad Ghorbani purchased a property at 10B Heretaunga Avenue, Onehunga. He said in his interview with the SFO investigators that he had been looking for a property to purchase for some time and he found it through Homei Azimi as it was one of her listings. He was well aware that the income he earned in New Zealand was insufficient to support the mortgage required, and knew that the Bank would not take into account monies he derived from his share of the family business in Iran. He said in his interview that he had about \$700 weekly coming into his account and he needed more income to buy a house over \$400,000. He had little in the way of a deposit. He said he needed to earn \$800 - \$900 per week in addition to the \$700 per week, for a short period of time, two to four months. That would enable him to pay monies into his bank account and demonstrate an income flow which could be attributed to wages. In short, he adopted the

same device as set out in count 1, the count concerning Mehrdad Ghorbani's acquisition of 23 Glenmore Road. His brother, Mehrdad, gave him a letter from Resourceful Engineers Limited, his company, which falsely stated that Mehrdad was an employee earning \$950 weekly. Monies were paid from Resourceful Engineers Limited's bank account to Mehrdad Ghorbani from money given to it by him to create the misleading impression that he was earning money from that company.

[189] Mrs Devoy forwarded the mortgage application to the ANZ. She filled out the details and the application, was signed by Mehrdad Ghorbani, although the application was in his names of Mehdi Ghorbani Sarsangi. It represented that he was earning as an employee of Resourceful Engineers Limited, \$62,000 gross per annum or \$4,116 net monthly. The letter from Resourceful Engineers Limited, signed by Mehrdad Ghorbani was sent by Mrs Devoy to the Bank.

[190] The property itself was acquired using the 'dummy purchaser' procedure. Mrs Omidvar, Mehrdad's mother, entered into an agreement for sale and purchase with Urata Alaelua on 5 July 2007 to purchase the property for \$420,000. She subsequently entered into an agreement with her son, described as Mehrdad Ghorbani in the agreement, to sell him the property for \$470,000, settlement of both transactions being effected on 10 August 2007. The ANZ provided a mortgage of \$448,740. It was not told of the first transaction, and Mrs Devoy only forwarded a copy of the second agreement for sale and purchase between Mrs Omidvar and her son.

[191] The ANZ relied on the representations contained in the loan application supported by the letter signed by Mehrdad Ghorbani on behalf of Resourceful Engineers Limited, that Mehrdad Ghorbani was an employee earning \$62,000 per annum. He was never an employee of that company. Although not saying so at interview, at trial Mehrdad Ghorbani, as did his brother in relation to Mehrash Limited, said that he worked as a sub-contractor for Resourceful Engineers Limited from time to time, but accepted that the monies received in that way did not approach those said to be earned. He maintained that the statements were accurate as to the actual amount of income he received, but were false or inaccurate as to their source. He was aware of the need to ensure that the Bank was not aware the source of the majority of his income was from Iran.

[192] He said he relied on the advice he believed his brother had received from Mr Golchin, whom he knew, and had met on social occasions. He did not say that Mr Golchin had given him that advice. I have earlier said that I do not accept that Mr Golchin gave the advice Mehrdad Ghorbani claimed he gave. The evidence suggests to me that the brothers learnt the strategy from their sister, Mrs Eli Devoy, who had experience as a mortgage broker.

[193] I have already discussed the propensity evidence I believe that I am entitled to rely on in that respect for counts 1 and 4, and the same reasoning applies for this count. Consequently, the story given that it was Mr Golchin who suggested this scheme is, I am satisfied, quite untrue and one invented after matters began to unravel.

[194] Therefore I am satisfied that the Crown has proved to the required standard that Mehrzad Ghorbani, in his application to the ANZ deceived that Bank as to the source of his income and his employment. He knew that information was a material particular as he was aware of the Bank policy. He made the representation intending to deceive the Bank knowing of its policy of not taking overseas income into account, and knew of the false details contained in the letter he obtained from his brother, Mehrdad Ghorbani, which confirmed his employment with Resourceful Engineers Limited and the amount allegedly paid to him. Neither were true. There is no issue of ignorance or mistake of fact given I have rejected the evidence that advice, on which both brothers said they acted for their mortgage applications, was received from Mr Golchin.

[195] Accordingly, I find Mehrzad Ghorbani guilty of count 2 of the indictment.

[196] As for his brother, Mehrdad Ghorbani, and sister, Mrs Devoy, jointly charged with him, they also are guilty of this count as parties by assisting their brother in his deception of the ANZ. Mehrdad Ghorbani provided a letter from Resourceful Engineers Limited with false details both as to employment and the amount of income. He did so knowing it would be used to support the mortgage application and he knew the representation contained in the letter was false and would be used to deceive and that it was a material particular relevant to the application. He knew the Bank would not take into account income earned from Iran and that he was assisting his brother to deceive the Bank over this. He knew the Bank would rely on this false representation.

[197] Having rejected his defence of receiving advice from Mr Golchin, there is no issue of claim of right and accordingly the Crown has proved its case to the required standard in respect of this count and I find Mehrdad Ghorbani guilty as a party in respect of this count.

[198] Mrs Devoy also is guilty as a party. She assisted her brothers with their applications including, for this count, with Mr Mehrzad Ghorbani's application to the ANZ which contained the false representations, and she forwarded that and the letter from Resourceful Engineers Limited to the Bank knowing it would rely on the information and that it was false. I have rejected her defence that she now accepts the details were false, but was unaware of the same at the time as she had no reason to challenge her brothers on the matter.

[199] This was part of a scheme to obtain mortgage funding from the Banks to enable purchase of property to proceed in the absence of any cash contribution by her brothers. There were two parts to the scheme, the first, the double purchase which involved their mother who acted as the initial purchaser for the lesser sum and, the second, the obtaining of a mortgage for a sum sufficient to settle both transactions and produce a surplus. Given both brothers earned modest incomes in New Zealand the scheme was devised to enable them to acquire properties at prices far higher than they could obtain had their true incomes earned in New Zealand been disclosed.

[200] Mrs Devoy was an essential part of this and as a mortgage broker, and an Iranian advising other Iranians, would have known perfectly well the Bank's policy of not accepting income earned from Iran as income which could be used to support mortgage applications. She played her role in the scheme involving count 2 by forwarding the application and supporting documents to the Bank knowing the application contained false details as to income and the source of income, and that the document her brother, Mehrdad Ghorbani, gave Mehrdad Ghorbani, which was used to support the application was also false in its particulars. She knew the purpose was to deceive the Bank. No issue of claim of right arises because of the absence of any belief as to a proprietary or possessory right in the property.

[201] Accordingly the Crown has proved beyond reasonable doubt, insofar as the essential elements of count 2 are concerned, Mrs Devoy's guilt as a party in the assistance she gave to her brother, Mehrzad Ghorbani.

**Count 3 – 10B Heretaunga Avenue, Onehunga, Auckland**

[202] This count, which also concerns the purchase of 10B Heretaunga Avenue, by Mehrzad Ghorbani is one for which he and his sister, Mrs Devoy, are jointly charged. It is a further charge laid under s 240(1)(a) of the Act and alleges that they obtained property, namely the residence itself, without claim of right and by deception. The false representation intending to deceive was a representation that Mehrzad Ghorbani had paid a deposit of \$23,500 to the vendor at 10B Heretaunga Avenue. The vendor was, of course, Mrs Omidvar.

[203] Although the vendor was Dana Omidvar, the name she used on the agreement for sale and purchase between Mehrzad Ghorbani and her was Zahra Dehghan, which was Mrs Omidvar's former Persian name. The agreement for sale and purchase was noted as a private sale. Mrs Devoy sent the application for mortgage finance for her brother to the ANZ to assist with the sale purchase. The fact that the vendor for the two transactions for which the brothers were seeking finance from the ANZ was the same vendor would not have been apparent to the Bank because of the different names used, Dana Omidvar for the Glenmore Road transactions and Zahra Dehghan for the Heretaunga Avenue transaction.

[204] The property at 10B Heretaunga Avenue was, as Mehrzad Ghorbani said in his interview, one that had been listed for sale with Barfoot & Thompson. Mrs Azimi worked at the Royal Oak branch of that firm as a real estate agent. Mrs Devoy's evidence was that her mother knew nothing about the transaction. The agreement provided for a purchase price of \$470,000 with a deposit of \$15,000. Mehrzad Ghorbani confirmed at interview that no monies were paid as a deposit.

[205] Mrs Devoy forwarded the signed loan application to the ANZ. The loan was conditionally approved on 6 July 2007. The Bank agreed to advance \$448,740 by mortgage. The difference had to be paid by Mehrzad Ghorbani the Bank's conditional approval requiring *evidence of sufficient deposit to complete settlement*.

[206] On 8 August 2007, a note was signed by Zahra Dehghan acknowledging receipt of \$15,000 cash on 16 July 2007 and \$8,500 on 7 August 2007 from Mehrzad Ghorbani for a deposit in respect of the purchase. Mrs Devoy said that she had been told by her brother, Mehrzad, that \$15,000 had been paid to her mother.

[207] She said at trial “*she guessed he paid it*” and that he showed her some paperwork for it. A note was found on the conveyancing files for Mrs Omidvar at the Conveyancing Centre, solicitors, of whom the principal was Thada Chapman, who gave evidence. The file note indicated that Mrs Omidvar had confirmed the receipt of the monies but was told she would need to sign a document confirming that and the note of 8 August 2007 was duly signed. The evidence was unclear as to whether it was signed before the solicitors or simply forwarded to them, but in any event a credit for payment of those monies was given by Ms Chapman on her settlement statement so that the balance required to settle the purchase of the property, after apportionment of rates was \$446,402.80.

[208] In contrast to what he told the interviewers at the SFO, Mehrzad Ghorbani maintained that he had paid the monies for which his mother acknowledged receipt. He said the payment of \$15,000 was made in the form of the deposit that was paid to Barfoot & Thompson on the purchase of 10B Heretaunga Avenue by Mrs Omidvar. There was evidence that a deposit in this amount was paid but the statement from Barfoot & Thompson did not indicate the source of payment. Ms Miller, the SFO accountant who gave expert evidence as to the overall scheme, also agreed \$15,000 was withdrawn from Mrs Omidvar’s bank account on 26 July 2007. However under cross-examination from his brother Mehrzad Ghorbani agreed those monies were used to repay a personal loan to the ANZ. As such they could hardly then be said to be the monies used to support the purchase of the property.

[209] Another amount, the sum of \$9000 had also been drawn from that account on 23 July 2007. Mr Ghorbani’s evidence was that the bank account, although in his mother’s name, was an account used by him and also his brother to bank monies brought across from Iran, so the monies were in effect theirs, and accordingly he said he paid \$23,500 from those monies as a contribution to the purchase of the property which accorded as to amount with the note of 8 August 2007 signed by his mother. The fallacy of that argument is that even if he had paid \$15,000 to Barfoot & Thompson it was not paid on the

transaction the Bank was financing, namely the purchase by him of a property from Ms Dehghan. It was paid with respect to another transaction. Further the balance of \$8500 which Ms Dehghan acknowledged in her note as received in cash was drawn from an account she held for him and paid to her, on his evidence, effectively as an agent for him as she was only the 'middleman'. Effectively he was paying himself as, on his evidence, she had no role in the sense that it was never intended that she acquire an interest in the property, that interest was only to be acquired by him.

[210] At that time Iran was subject to international sanctions. Iranian currency could not be exchanged for New Zealand dollars through the Banks. Consequently a relatively informal system developed among Persians in Auckland who wished to receive monies from Iran or send monies back there. One form of transaction was to agree a rate of exchange with a friend or acquaintance in New Zealand who would then provide New Zealand dollars for the agreed amount. Money or property at the agreed rate would be transferred by the person seeking the cash from property or resources held in Iran to an account or nominee of the person providing the New Zealand currency. That way Persians living in Auckland, or elsewhere in New Zealand, were able to avoid the commissions, or achieve a better rate of exchange than that charged by two currency exchange businesses exchanging Iranian currency and used by Persians in Auckland. One of these was Persian Trading which operated from a shop in Mt Eden Road. That business was owned and operated by Mr R Rad. Another currency exchange business was operated at the time by Persian Network, managed and owned by Mr V K Bigy.

[211] Mr Mehrzad Ghorbani and Mrs Devoy needed to convince both the Bank and the solicitors involved in the transaction that the cash contribution, being the difference between the purchase price and the mortgage, had been paid and so on 7 August 2007 Mrs Devoy wrote to Ms Sharma at the ANZ to say that Merhzad Ghorbani had paid the deposit of \$15,000 to the vendor already, and would fax proof of that plus the rest of the deposit that was needed by settlement. A few minutes later she wrote again sending by facsimile a receipt for the exchange of Iranian Rials into New Zealand currency of \$24,000, the receipt purportedly issued by Persian Trading to Mehrdad Ghorbani and under his signature. She wrote that the copy which was in Farsi shows '*account number and available funds in Sepah Bank in Iran, Tehran City*'. At interview with the SFO Mehrzad Ghorbani noted the signature looked like his. However at trial he denied that was so and

linked the document to Mrs Azimi. The document was yet another false document created by Mrs Devoy. At trial she accepted she wrote the details on the receipt. Mr Rad, in evidence that was unchallenged, confirmed it had not been issued by Persian Trading.

[212] The calculation of Persian Rials to New Zealand dollars which appeared on the receipt purportedly given by Persian Trading came about, Mrs Devoy said, because the money was in fact provided by Mrs Azimi, a proposition never put to her, but the receipt she gave for it was in Persian or Farsi which was not acceptable to the Bank. Consequently Mrs Devoy said she filled out the false document, the receipt purportedly from Persian Trading. There was a receipt in Persian, said by Mrs Devoy to have been provided by Mrs Azimi, and which was also faxed to the Bank. Two seals appeared on that document, one from Persian Translation Services at the top left of the page, and the other from the New Zealand Society of Translators and Interpreters with the translators name in the middle of the seal. These seals appeared in identical places on a document found at Mrs Devoy's home by the SFO when they conducted the search there and it was obvious, notwithstanding Mrs Devoy's denials, the sealed receipt forwarded to the Bank to support the contention that a deposit had been paid was one of the seals transposed from the document found at Mrs Devoy's home.

[213] Mehrzad Ghorbani had at interview, as I have said, accepted that the signature on the fake Persian Trading receipt looked like his but that concession was retracted in his evidence at trial. Mr Ghorbani accepted the false Persian Trading receipt was faxed to the ANZ as evidence of the fact that he had monies, described by Mrs Devoy in her facsimile of 7 August 2007 as a deposit, for the purchase. He denied it was his signature on the Persian Trading receipt but then said, when reminded of his interview where he had said that it was similar, that he thought he had said that because he believed he was taking responsibility as following his return from Iran he was estranged from his family. That explanation makes no sense whatsoever.

[214] He told the SFO interviewer a deposit was not paid and he did not have to do so because of the way the transactions were structured, in other words because the borrowings were more than were needed to settle the original 'dummy purchase', cash was not required. He said he was confused at the interview but I do not accept that. His answers were clear enough. When it was put to him that he had explained to the SFO that the aim



of the scheme was to acquire a property with 100% finance through the inflated purchase price on the second agreement and with the mortgage raised being sufficient to settle the first, he said he made a mistake and was confused. His artless attempt to explain his concession at his interview is simply another example of the poor quality of his evidence.

[215] Consequently the accused presented three stories. Mehrzad Ghorbani's first account was given to the SFO interviewer and he said no monies were paid as a deposit for his purchase of 10B Heretaunga Avenue. The second account at trial was they were paid from monies in his mother's bank account which, although in her name, was used to hold funds received from Iran for him and also for his brother Mehrdad. As the analysis in the preceding paragraphs show, that is not correct. Mrs Devoy said they were paid from monies changed by Mrs Azimi. No question was put to Mrs Azimi concerning that proposition and it conflicts with the evidence given by Merhzad Ghorbani. Further, the document sent to the Bank to support this proposition was clearly false.

[216] The mortgage application was deliberately misleading as to Mehrzad Ghorbani's source of employment and the funds he supposedly earned there, and Mr Ghorbani and Mrs Devoy simply continued with the deception by creating documents to deceive the solicitors and the Bank through evidence of a cash contribution. A credit for \$23,500 was given by the vendor's solicitors on settlement for these monies, which were never paid. Consequently I am satisfied both accused deliberately made false representations in the form of the Persian Trading receipt signed by Mehrzad Ghorbani, but filled out by Mrs Devoy and forwarded by her to the Bank as evidence of the introduction of monies belonging to Mr Ghorbani to the purchase. The representation was made with the intention of deceiving the Bank and both accused knew the representation was false in a material particular, namely as to the introduction of cash for use in the purchase and to documents being provided in support. Neither can rely on the defence of claim of right as there is no issue of honest but mistaken belief. Consequently I accept the Crown has proved this count against both accused to the required standard and find them guilty of the same.

#### **Count 9 – 10B Heretaunga Avenue, Onehunga, Auckland**

[217] This count is one faced solely by Mrs Devoy. It concerns the sale of 10B Heretaunga Avenue to a friend, Nasrin Raisey, another member of the local Iranian or

Persian community. The charge of dishonest use of documents is laid pursuant to s 228(b) of the Act. The documents referred to in the particulars supporting the count are a loan application in Mrs Raisey's name dated 15 July 2009 together with payslips and bank statements also in her name. The transaction came about as by mid-2009 Mehrzad Ghorbani was unable to meet the mortgage payments for 10B Heretaunga Avenue, which was at risk of mortgagee sale. The reason for this, I accept, was the deterioration of the brothers' financial situation because of the loss of the proceeds of sale of their business in Iran, which had generated income for both brothers, and had formed a substantial part of the income they received, but which they had to disguise to obtain mortgages in New Zealand. Mrs Devoy, who was living in the property with her family at the time of the transaction this change related to, wished to preserve it for the Ghorbani family, and so reverted to the use of a nominee or 'dummy purchaser' with a mortgage raised in that person's name to ensure the property was 're-acquired' and thereby preserved. Ultimately, as Ms Ballantyne's evidence demonstrated, the ANZ suffered a loss of \$218,516.70 as a consequence of the mortgage advanced to Mehrzad Ghorbani and the civil proceedings that followed the defaults.

[218] Consequently, notwithstanding that the property had been purchased by Mehrzad Ghorbani for \$470,000, it was sold to Mrs Raisey on 31 July 2009 for \$310,000 with the assistance of a mortgage of \$248,000 raised from Westpac.

[219] The documents supplied by her, and which supported that mortgage application, follow the by now familiar pattern of being false and created specifically for the purpose of obtaining the loan.

[220] The application was lodged by a mortgage broker, Ms Louise Dunn, who undertook broking work for Adam Parore Mortgages Limited, of which at one point she was the general manager. Mr Parore also acquired a business known as Small Business Accounting and franchised various branches of that, of which one was at Penrose (SBA Penrose). In 2009 Mrs Devoy and Mrs Azimi owned that franchise. Within the Adam Parore Group there were cross-referrals between brokers and the various accounting franchises and through this Ms Dunn learned of Mrs Devoy. Although she never met Mrs Devoy she had several telephone conversations with her, and Mrs Devoy referred the application by

Mrs Raisey, which Mrs Raisey knew nothing about, for mortgage funding from Westpac to Ms Dunn.

[221] Ms Dunn said that Mrs Devoy told her that her husband was a mortgage broker but she did not like to refer clients to him as it created difficulties within her marriage. The details necessary to support the loan application were sent to Ms Dunn by facsimile from the W & P Devoy facsimile number and with that name on the heading of each facsimile. Also sent were several handwritten notes signed 'Eli'.

[222] Documents sent included a bank account with the ASB in the name of Nasrin Raisey purporting to show a balance of approximately \$109,000 in credit as well as monthly salary payments from Devoy Immigration of approximately \$3800. Also forwarded by facsimile from the W & P Devoy facsimile machine were payslips from Devoy Immigration, a business operated by Mrs Devoy and her husband, and indicating gross monthly salary for Mrs Raisey of a little over \$5100. These documents, the payslips and the bank statements, were false, a fact known to Mrs Devoy, but were sent by her to Ms Dunn to support the mortgage loan application to Westpac and were accepted by that Bank. Had they known they were false the Bank no doubt would have declined the loan.

[223] The account number which appeared on the bank statements purportedly belonging to Mrs Raisey related to an ASB account in the name of Sonia Mohammad Yari. This account was one by which Mrs Raisey's salary supposedly paid by Devoy Migration was shown. The other bank account sent to the ASB in the name of Mrs Raisey was one that showed a deposit of approximately \$109,000, but that account related to a joint account owned by third parties, Suryani Elizabeth and Budi Nataatmadja.

[224] The agreement for sale and purchase for the property for which a mortgage from Westpac was raised in Mrs Raisey's name was entered into on 18 January 2009 between Mehرداد Ghorbani as vendor, and Stan James Walsh or his nominee as purchaser. The agreement was prepared by Barfoot & Thompson at its Royal Oak office. Mrs Azimi was the agent involved in the transaction and she was subsequently disciplined by the Real Estate Agents Disciplinary Tribunal for listing several properties, of which this was one, on more than one occasion being reckless or wilfully blind to a fraudulent mortgage scheme. The other properties were 23 Glenmore Road, Pakuranga, 3/78 Paihia Road, One Tree Hill,

Auckland, and 3/185 Great North Road. The decision of the Tribunal was dated 16 September 2014 and led to her suspension as a real estate agent.

[225] Mrs Raisey planned a trip to the Middle East to assist her sister who was ill and look after affairs and so she gave Mrs Devoy a Power of Attorney dated 25 June 2009. The Power of Attorney was in general terms save that it specifically excluded Mrs Raisey's residential property from its ambit. She also deposited \$65,000 in a bank account to which Mrs Devoy had access, the monies to be used to assist her children who remained in New Zealand as required.

[226] Three weeks after the Power of Attorney was executed a Deed of Nomination making Mrs Raisey the purchaser under the agreement for sale and purchase was signed. She therefore became the purchaser under the agreement for 10B Heretaunga Avenue, although described in count 9 as being in One Tree Hill. There is no significance in the use of the names of two separate suburbs in the indictment to describe the property. Count 2, for instance, describes it as being in Onehunga.

[227] Mrs Raisey's evidence was the signature that purportedly was hers on the agreement for sale and purchase was not in fact hers, and neither was the signature on the Deed of Nomination. With respect to that latter document I do not accept that evidence as the document was witnessed by Ms Lundon, a Legal Executive in the employ of the Property Law Centre.

[228] The provision of the bank statement showing funds of approximately \$109,000 to the mortgagee was necessary to show that Mrs Raisey had the funds to cover the difference between the purchase price and the mortgage advance on settlement. Similarly the payslips were necessary to convince the lending Bank that she had the ability to service the mortgage, and for that reason bank account statements showing wage payments were also supplied. All these documents were false documents.

[229] Mrs Devoy said in her evidence that she accepted she handwrote the loan application details and forwarded it to Ms Dunn so that the details could then be transferred by her onto the mortgage application to be submitted to the Bank. She signed the document as if she were Nasrin Raisey, but thought she could do so under the Power of

Attorney, not realising that she was not entitled to sign as Nasrin Raisey, but had to sign as her attorney. That, she said, was simply an error on her part. I do not accept that evidence. Mrs Devoy knew exactly what she was required to do when executing a document under attorney as her sister Ella Ghorbani gave a Power of Attorney to her on 23 June 2009, the document being signed in Mrs Devoy's presence in the office of Andrew Seton, a solicitor in Auckland. Ms Ghorbani confirmed in evidence that Mr Seton explained to her what the Power of Attorney meant. He struck me as a careful solicitor and documents from his file concerning the purchase of 5 Ingleby Place, Kelston, Waitakere, by Ms Ghorbani, as Mrs Devoy's nominee, on 1 July 2009 show Mrs Devoy signed a term loan agreement with ASB Limited and an electronic transaction authority, both documents being executed under attorney, and with Mrs Devoy signing using her correct signature and as the attorney for Ella Ghorbani. Those documents were signed in a solicitor's office as the term loan agreement was witnessed by a legal executive. Consequently Mrs Devoy's evidence that she signed the loan application for this transaction on 15 July 2009 as Nasrin Raisey, as she thought that was how an attorney signed, is untrue as just over two weeks previously she had correctly signed documents as an attorney.

[230] Ms Devoy accepted the bank statements were false but said they were given to her by Mrs Azimi, a proposition never put to Mrs Azimi in cross examination. She said Mrs Raisey worked as a consultant to Devoy Immigration, but agreed she did not earn a salary. Her explanation for showing these details on the payslip was that, although she accepted Mrs Raisey did not earn a salary from Devoy Immigration she did earn a shareholders salary, although she did not specify from where, and she said that it was Ms Dunn's suggestion that Mrs Raisey's income be shown as salary rather than as a contractor to Devoy Immigration. She said that she also told Ms Dunn that Mrs Raisey owned a kebab shop but was told to show her income as salary and not to make matters complicated, presumably by referring to the kebab business. This was never put to Ms Dunn. She also said that the payslips had been given to her by Mrs Azimi. Mrs Azimi denied being the author of the false payslips, evidence which I accept.

[231] Ms Dunn said in her evidence that Mrs Devoy told her, when initially discussing referrals, that she worked with an agent at Barfoot & Thompson but Ms Dunn could not remember her name. She was told that Mrs Devoy dealt with the mortgages and the agent would source the property for common clients. This, I accept, was plainly a reference to

Mrs Azimi, and there is ample evidence from witnesses, both for the Crown and the Accused, that there was a symbiotic relationship between the two brought about by their friendship and common interest in business. However the evidence falls far short of suggesting to me that Mrs Azimi was involved in provision of documents used in the mortgage fraud as was asserted by Mrs Devoy in her defence to this count. I do not accept Mrs Devoy's evidence that the false documents were passed to her by Mrs Azimi. This transaction was plainly for the benefit of Mrs Devoy and her family. She was living in the property at the time and she had the necessary understanding, through her own work as a mortgage broker and her associations as to what was necessary to obtain finance. She admitted faxing details for the application, and the false supporting documents mentioned in the particulars to the charge, to Ms Dunn.

[232] That application, which was then used by Ms Dunn to support a mortgage application to Westpac, with the handwritten details provided by Mrs Devoy supporting the false income details and the deposit of \$109,000. The documents that supported that application, and which were false and are named in the particulars to the count, were sent from the facsimile number used by Mrs Devoy. She accepted she may have sent them. She said it was either her or someone else who had access to the facsimile, but I am satisfied it would have been Mrs Devoy. She was managing the loan application through the broker. There is nothing to suggest Mrs Azimi had anything to do with it. Ms Dunn did not even know her name and was only dealing with Mrs Devoy.

[233] The evidence is compelling that it was Mrs Devoy who supplied the false bank statements and the false payslips to Ms Dunn. She knew the payslips were false and she would have known the bank statement was false. The bank statements themselves were in the names of other persons but those persons had been clients of SBA. Other false bank statements were found at Mrs Devoy's address in the SFO search in 2012. She clearly was at the heart of the false representations made to Westpac in relation to the loan application and false supporting documents. I do not accept Mrs Devoy's evidence that Mrs Raisey was fully aware of what was going on. This application had everything to do with Mrs Devoy wanting to retain for her and her family's benefit the property in which she was living.

[234] Consequently the loan application with false details supplied by Mrs Devoy to Ms Dunn and forwarded by her to Westpac as Mrs Devoy intended, and the payslips and bank statements, also false documents, were used by Mrs Devoy to obtain a pecuniary advantage, namely the mortgage loan of \$248,000 from Westpac to purchase 10B Heretaunga Avenue. She knew the representations were false and were material to the success of the loan application. She clearly intended, by forwarding these documents, that the Bank would be deceived. The Crown has proved each of the elements of this count against Mrs Devoy to the required standard and accordingly she is guilty of the same.

### **Count 18 – 10B Heretaunga Avenue, Onehunga, Auckland**

[235] This is the last count relating to the property at 10B Heretaunga Avenue and concerns a representation over payment of a deposit when the property was sold by Nasrin Raisey to Nasrin Kardani and Mohammad (Mehrddad) Ghorbani on 9 December 2009. Mrs Devoy signed the document as if she were Nasrin Raisey without purporting to do so under the Power of Attorney. The purchase price under the agreement was \$550,000 and a mortgage from Westpac for \$440,000 was obtained to enable Ms Kardani and Mr Ghorbani to complete the purchase. Mrs Devoy and Nasrin Kardani are jointly accused of obtaining property by deception pursuant to s 240(1)(a) of the Act.

[236] Ms Kardani was, at the time of her interview with the SFO, living with Mehran Ghorbani, Mrs Devoy's brother. She had met him after being introduced by Homei Azimi, whom she knew when she lived in Christchurch. Through the connection with Mrs Azimi and Mehran Ghorbani she came to know of Mrs Devoy, and agreed to assist as a 'dummy purchaser' in several properties, including 10B Heretaunga Avenue. She said she was asked to assist with the Heretaunga Avenue property because she was aware there were financial difficulties and Eli Devoy asked her to act as purchaser with one of the Ghorbani brothers as the family did not want to lose money over the house, presumably by having it sold through a mortgagee sale, as they had spent money in renovating the same. She agreed, and a mortgage loan application was lodged with a potential mortgagee, in her name, and in the name of Mehran Ghorbani but was declined because finance for Mehran Ghorbani was not approved. Consequently an agreement was signed between Mrs Raisey and Ms Kardani on 24 November 2009, which settled on 9 December 2009. Mr Mahommad (Mehrddad) Ghorbani was nominated as a joint purchaser with her under a

Deed of Nomination on 8 December 2009. Evidence needed to be produced for the mortgagee and the solicitors involved in the transaction that Ms Kardani had the difference between the purchase price of \$550,000 and the mortgage advance of \$440,000.

[237] While Mehrdad Ghorbani had been frank in his interview with the SFO as to why he had reverted to us original names for the purchase of 23 Glenmore Road at about the same time as this purchase, he did not suggest in his evidence the use of his original name for this transaction was at the insistence of Mrs Azimi as he had in relation to the purchase of 1/37 Richard Farrell Avenue.

[238] Two documents were prepared and were used to represent payment of the deposit from Ms Kardani to Mrs Raisey. One was a cheque for \$10,000 drawn on the BNZ and purportedly signed by Ms Kardani. At interview she denied that the signature was hers and, although expert handwriting evidence was not given, I accept that the signature appears different to that which appeared on documents clearly signed by Ms Kardani. The cheque itself was copied and sent by Mrs Devoy with a note to Darsan Singh, a solicitor, stating that the cheque had been issued by the purchaser, and had been cleared in Mrs Raisey's account on 4 December 2009.

[239] The other document was a typewritten letter addressed to Shean Singh, solicitors, and dated 9 December 2009. It advised Mrs Singh, Ms Kardani's solicitor, that Ms Kardani had paid \$100,000 to the vendor, the payment being made into her account in Dubai, and invited Mrs Singh to confirm that with the vendor's solicitor, Ms Lundon of the Property Law Centre. That firm acted for Mrs Raisey on the transaction.

[240] The two credits arising, based on the representation made to the solicitors, were accepted by the solicitors and consequently when the matter settled on 9 December 2009 the balance required to settle was \$440,221.10, credit having been given for monies of \$110,000 paid by Ms Kardani as stated. Mrs Devoy wrote to Ms Lundon of the Property Law Centre on 9 December 2009 stating that \$100,000 had been transferred to Nasrin Raisey's account and noting that she had confirmed that to Mrs Raisey as well. In all, after repayment of the Westpac mortgage in the name of Mrs Raisey, a surplus of \$189,638.35 was achieved on this transaction.



[241] At interview Ms Kardani confirmed she did not pay any monies towards the acquisition of the property and simply wrote the document addressed to Shean Singh at the request of Mrs Devoy. She said she was told by Mrs Devoy that it was merely a formality for the Bank and for the lawyers.

[242] At trial Ms Kardani's evidence implicated Mrs Azimi in the transaction, in contrast to what she said at interview, not having mentioned her. She said that Mrs Azimi came to her and asked her for a cheque and so she gave her a cheque book and signed one cheque, but with the details not filled out. She said she was told that was in relation to Barfoot & Thompson's deposit. That was not the explanation given at the interview where she claimed the signature on the cheque was not hers. As for the statement which represented that \$100,000 had been paid to the vendor of 10B Heretaunga Avenue, she said she only signed the document as she had been led to understand that the money would be transferred to the seller's bank account in Dubai. She said Mrs Azimi showed her a cheque for \$119,600 dated 9 December 2009 and payable to Eli Devoy. Her evidence was as she believed those monies were to be deposited in Ms Raisey's Dubai bank account she was willing to sign the document addressed to Shean Singh Solicitors confirming that she had paid \$100,000 for the deposit for 10B Heretaunga Avenue to the vendor. That document, she said, was presented to her when she was shown the cheque.

[243] That explanation made no sense whatsoever as the Bank cheque for \$109,600 drawn on 9 December 2009, as the evidence of Mrs Miller affirms, was paid from Mrs Raisey's account to Mrs Devoy once settlement of the transaction occurred on that day and after the surplus funds of \$189,638.35 which arose on the transaction were paid into the ASB account registered in the joint names of Nasrin Raisey and Eli Devoy by the Property Law Centre, the solicitors acting for Mrs Raisey. Ms Kardani could not have seen the cheque prior to settlement. The cheque proceeds were paid into Mrs Devoy's own Kiwibank account. Further, when Mrs Azimi was cross-examined she was asked whether she had anything to do with the falsifying of documents to process the sale and purchase of 29 Chorley Avenue and 10B Heretaunga Avenue, which she denied. The scenario recounted by Ms Kardani in her evidence as to the part she alleged Mrs Azimi played was never actually put to her.

[244] Ms Kardani's defence was there was no intended deception as she believed the cheque was to be used for a deposit, and the monies were to be deposited in Mrs Raisey's bank account in Dubai.

[245] I found Ms Kardani's explanation at trial unconvincing and untruthful. She attempted to implicate Mrs Azimi in the transaction, not having done so at interview. Mrs Azimi had, I am satisfied, no direct involvement with the obtaining of a mortgage for the property, which at the time the application was made, together with the representations to the solicitors with respect to the deposit, was occupied by Mrs Devoy and her family. Ms Kardani's explanation that she was confused and overwhelmed at interview did not have the ring of truth. Certainly she did not give that appearance on the DVD of the interview, which was shown at trial, when answering the interviewer's questions. In marked contrast to her evidence at trial, she gave the impression of answering questions honestly. She said she did not think there was "*actual money in between*", meaning between the purchase price and the mortgage advance, and yet still signed the document advising of a payment of \$100,000 into Mrs Raisey's Dubai account. She said she knew it was going to be used for the lawyers and was told that it was only a formality. Consequently she admitted signing a document which she must have known was false, given that she admitted knowing that the difference between the mortgage advance and the purchase price would not be paid, and that it was just for the lawyers. Signing it was clearly a false representation, and was false in a material particular, and that was known to her. She knew \$100,000 was most of the "*actual money in between*" the purchase price and the mortgage advance. I am satisfied the account at interview is the true account, and that the account given at trial was simply an invention by her to both afford herself a defence and align her evidence with Mrs Devoy and her brothers to emphasise an involvement by Mrs Azimi in the creation of the false documents and the making of misrepresentations to the Bank and solicitors, when the evidence does not support that. She knew the documents were false, the cheque and the representation of payment, and that they were both material and were being used for the purposes of deception of the solicitors, and also the Bank

[246] Accordingly I am satisfied the Crown have proved each of the elements of count 18 against Ms Kardani to the required standard of proof and she is accordingly guilty of the same.

[247] As for Mrs Devoy, she was the occupier of the property at the time of the transaction, neither Mrs Raisey nor the supposed purchasers, Ms Kardani and Mr Mehrdad Ghorbani, ever taking occupation of the property. I have already discussed the account given by Ms Kardani in respect of the transaction at interview. Mehrdad Ghorbani in his interview also gave a similar account of how he came to be involved, saying that he was asked by his sister to become involved, and also saying that she had attempted to purchase the property herself several times but for some reason had been unable to do so.

[248] I accept that, as with Ms Kardani's statement, does not amount to evidence against Mrs Devoy given it was at interview and without Mrs Devoy being present, and without her accepting the truth of the account when cross-examined on it at trial. Mrs Devoy accepted she had forwarded a note in her handwriting to Sheryl Lundon of the Property Law Centre on 4 December 2009 in which she told her that Mrs Raisey had received the \$10,000 deposit from the purchaser, and that she had the funds and would bring her the evidence. The cheque was never presented and was merely a device to convince the solicitors that part of the deposit had been paid. The other part was the purported transfer of \$100,000 to Mrs Raisey's account, which Mrs Devoy advised Ms Lundon of on 9 December 2009. That also was false. Mrs Raisey never received any money as a result of the sale of the property and it was never intended that she should.

[249] I agree with the Crown submission that Mrs Devoy in dealing with the solicitors represented that this was an arms-length transaction between unrelated people. She did not disclose to the solicitors involved, or for that matter Westpac, that she was living in the property, that the vendor was a friend for whom she held a Power of Attorney, that Ms Kardani, a purchaser, was living with her brother, and that the other purchaser was her older brother using names he had renounced. This was as much a fraud on the Bank as the false representations particularised in the count as to payment of a deposit. The deception was one in which Mrs Devoy, as with Ms Kardani, took an active part in misleading the solicitors, and in turn the mortgagee Bank, in convincing both that a cash contribution to the purchase of \$110,000 was paid when it was not and was never intended that it would be. The transaction is just another one in the continuing scam on the Banks and on solicitors and mortgage brokers through the provision of documentation specifically manufactured and falsified to deceive.

[250] As it happened, it did not take Westpac long to discover the fraudulent nature of the transaction. They were alerted by the ASB to discrepancies discovered in the application previously made to them. Westpac's inquiries revealed fraudulent bank statements had been provided to support the application, together with fraudulent payslips for Mr Ghorbani, as well as other matters. There was subsequently an interview with Ms Kardani and Mr Mehrdad Ghorbani on 9 February 2010 in relation to the loan application. Mr Ghorbani apparently presented himself at interview using his original Iranian names. The interviewer, Mr Sutton, made notes of the interview and it appeared that it had been represented to him that Ms Kardani met Mr Mohammad Sarsangi in Auckland and they now lived together, and they wanted to move out from the family and had heard that there was a house for sale in Onehunga owned by Mrs Raisey. Ms Kardani was to sell her share in a property and live with Mr Mohammad Ghorbani Sarsangi in Onehunga. When asked about this in cross-examination Ms Kardani suggested that the error was on Mr Sutton's part and that he had got the wrong impression as she was actually in a relationship with Mehran Ghorbani. I think it unlikely he got this much detail wrong. The account given to Mr Sutton was plainly misleading. Even when the fraud had been discovered there were continuing attempts to deceive the Bank. Ms Kardani's true reason for entering into the purchase was that given to the SFO at her interview.

[251] Through the deception property was obtained, namely 10B Heretaunga Avenue, without claim of right. Mrs Devoy was well aware that the false representation, the representation that a deposit of \$110,000 had been paid by Ms Kardani to Nasrin Raisey was made with the intention of ensuring the transfer of the property to Ms Kardani and her brother, and that the representation was false in a material particular in that had the Bank known of the falsity being perpetrated on it by Ms Kardani and Mrs Devoy, it would have refused the loan. Had the solicitors known the deposit monies had not been paid the transaction would not have proceeded. This was simply another fraudulent device used to deceive the Bank and the solicitors and, accordingly, I am satisfied that the Crown have proved to the necessary standard the elements of this count against Mrs Devoy and she is guilty of the same.

**Count 5 – 174 Main Road North, Christchurch**

[252] This is a count faced solely by Mrs Devoy as her brothers Mehrzad Ghorbani and Mehran Ghorbani, who were jointly charged, earlier pleaded guilty. It is a charge laid under s 240(1)(b) of the Act of obtaining credit, namely a loan of \$302,700 from the ANZ, without claim of right and by deception.

[253] The false representation intended to deceive the Bank was one representing that Mehran Ghorbani was working full time for Persi Developments Limited, a company owned by his brother Mehrzad Ghorbani, and earning \$6,500 net monthly and/or \$1,500 net weekly. The false representation was made as part of the loan application to secure the mortgage to acquire the property. Mehran Ghorbani was not employed by Persi Developments Limited. He derived no income from the company.

[254] Mrs Devoy's defence was identical to that for the earlier counts 1, 2 and 4 involving her brothers, Mehrdad and Mehrzad. She said she accepted the documents containing the false details from him and forwarded them to the Bank without knowing of the falsity or questioning him in respect of them as she had no reason to do so. She said she understood her brothers worked together as they had in Iran.

[255] In support of her evidence that she knew nothing of the false details surrounding Mehran Ghorbani's loan application, which she forwarded to the ANZ, her brother Mehran gave evidence on her behalf. He had earlier pleaded guilty to count 5, and also to counts 6 and 7 in the indictment which concern 3/78 Paihia Road. When giving his evidence he said he manufactured a letter on Persi Developments Limited ("Persi Developments") letterhead which represented that he earned \$6,500 net per month or \$1,500 net per week, and signed it using the fictitious name Ali Ardalan, representing that he was the Operating Manager of the firm. Persi Developments was Mehrzad Ghorbani's company and had no employees other than him, and then only occasionally. It was not a successful business. Mehran Ghorbani also agreed that he pooled all his sources of income, which at that time was mostly casual work, and paid them into his bank account so as to align the payments with the details provided in the false letter. He had Persi Developments pay these monies by automatic payment for a period of time, at other times he simply deposited them into the bank account himself.

[256] He accepted that his evidence was in marked contrast to what he said in his interview at the SFO in Auckland on 18 October 2012, only two days after Mehrdad Ghorbani was interviewed. In that interview he said Mehrdad Ghorbani had given him the letter, and he also said that his sister was aware that he did not work for Persi Developments. He explained the differences by saying he did not understand the questions and did not take the interview particularly seriously, but I am satisfied that was far from the truth. His evidence on the point was simply not believable. He could hardly have had access to Persi Developments' account for the purpose of making the payments into his bank account without his brother, Mehrdad, acquiescing and in any event Mehrdad pleaded guilty to count 5. Consequently his evidence blaming himself for this offending and exonerating his brother and sister is simply not believable, and follows the familiar pattern of other accused retracting incriminating statements made at interview. There is a clear pattern in the way Mehrdad Ghorbani and his brothers approached these matters and I am satisfied their evidence was tailored to exculpate themselves and their sister, Mrs Devoy.

[257] I do not accept Mr Mehran Ghorbani's evidence that his sister was unaware of the false income details he was providing.

[258] In relation to the application for mortgage funding to purchase 3/78 Paihia Road he made the false representation that he worked for Stresscrete. That representation is a particular given in support of count 7, to which he pleaded guilty. He said that he told Homei Azimi that he did not work for Stresscrete, a company which Mehrdad Ghorbani worked for, at a time when Mehran and Mehrdad Ghorbani were living with Mehrdad Ghorbani at his property at 23 Glenmore Road. It beggars belief that if Homei Azimi was aware that his claim to be working for Stresscrete was false then her close friend Eli Devoy, who assisted her brother with the mortgage application for that property, was not also aware of it.

[259] Mrs Devoy was aware that her sister-in-law, Medhi Ghorbani, provided false details to support a mortgage application for Mehrdad Ghorbani and his wife to purchase 1/37 Richard Farrell Avenue, and pleaded guilty to count 14 in relation to that false representation. Further, Mehran Ghorbani in his evidence said as well as the reference to Stresscrete in relation to his loan application for 3/78 Paihia Road in October 2008 which

she lodged, within close proximity to the Paihia Road application, an application for mortgage finance on his behalf for the purchase of 174 Main Road North, Christchurch, was made in which she handwrote on the application a claim that he had previously worked for Giga for three years and eight months. That representation was in Mrs Devoy's handwriting and was false as he never worked for Giga, which was known to Mrs Devoy. Her brother-in-law, Hassan Salarpour, did work at that company. It was owned by another Persian, Farhard Jabbari. False representations in respect of Mr Salapour's income from Giga are part of the particulars supporting count 11, to which Mrs Devoy pleaded guilty prior to trial. The pattern is glaringly obvious. Her brothers created false employment details for each other for companies which they owned or controlled. Monies were paid by those companies into the bank accounts of the brother applying for a loan from funds given to the company by the particular brother/applicant. This created an income trail designed to mislead the Bank into believing that the details of employment given in letters from the companies were correct. Income was also said to be earned from companies such as Stresscrete and Giga where the applicant had not worked, but where one of the brothers or a close relative had. The applications were all lodged by Mrs Devoy on behalf of her brothers. These applications for the purchase of the properties in the individual brothers' names were within a period of approximately 15 months.

[260] I am satisfied that the family was much closer than the accused represented. They lived with each other from time to time, and pooled resources and supported each other in the mortgage frauds. For Mrs Devoy to say, as she does, that she was unaware of the falsity of these documents or what her brothers were doing is not credible. She was a mortgage broker at the time, notwithstanding her efforts to portray herself as not particularly competent with computers, or as a simple PA to Mrs Azimi or her husband, and was the person collating information and forwarding it to Banks, or alternatively dealing with mortgage brokers and providing the same type of information to them. She seemed to be anxious to distance herself from her husband's business as a mortgage broker, and in that respect the note found in his handwriting at the search of their residence, in which he acknowledges his complaints about fraud, is easily understood. Mrs Devoy was right at the centre of these frauds and for her to say otherwise, particularly in relation to her brothers, simply defies belief.

[261] Consequently, I am satisfied beyond reasonable doubt that she assisted her brother, Mehran Ghorbani, by forwarding an application containing details as to his employment and income, which she knew to be false, to the ANZ to help him secure a mortgage of \$302,700 from that institution. The mortgage would not have been advanced by the Bank had it known of the false details, and this transaction led to a significant loss for the Bank as when the property was subsequently resold at mortgagee sale, as the evidence of Mr B Martin, a mortgage advisor at the Bank, confirms, \$150,501.30 was effectively written off, the property selling for significantly less than the purchase price of \$299,000.

[262] Mrs Devoy was aware of the deception of the Bank, knew that the representations were false in a material particular, and knew what she was assisting in was a fraudulent device with the intention of deceiving the Bank. There can be no issue of claim of right. Accordingly, the Crown have proved each of the elements of this count to the required standard of proof, and Mrs Devoy is guilty of this count as a party pursuant to s 66(1) of the Act.

#### **Counts 6 and 7 – 3/78 Paihia Road, One Tree Hill, Auckland**

[263] There are three counts which concern this property, two, counts 6 and 7, concern false representations allegedly made on the mortgage application of Mehran Ghorbani whereby he was able to obtain a loan of \$279,000 from Westpac which enabled him to purchase the property on 19 January 2009 from his mother, Dana Omidvar, for \$316,000. The property was sold by him 18 months later to another Persian, Ben Ferrari, and the circumstances of his sale to another associate of the Ghorbani family, Fatemeh Saei on 24 August 2010 for \$310,000 are the subject of count 25 of the indictment.

[264] For count 6 three representations are specified in the particulars and are said to be false, reliance on which led to Mehran Ghorbani obtaining a mortgage of \$279,000 from Westpac. I am satisfied the loan would not have been granted but for the representations. Ultimately, as Ms Lynette Tompkins said in her evidence, Westpac suffered a loss of \$112,361.61 on this transaction. The first representation is that the purchase price for the property at 3/78 Paihia Road was \$316,000. The second representation said to be false was that Mr Ghorbani paid the vendor a deposit of \$10,000, and, thirdly, that he paid a further \$27,000 to be able to complete the purchase.



[265] The agreement for sale and purchase for the property was sent by Mrs Devoy to Westpac in support of her brother's loan application on 2 December 2008. The agreement was a standard Real Estate Institute/Auckland District Law Society agreement with the specific details filled in by hand. Mrs Azimi acknowledged that she wrote the purchase price of \$316,000 on the document and the handwriting on the first page of the agreement was similar to her own. No agent was involved in the transaction. The agreement provided for a deposit of \$10,000 to be paid with settlement to be effected on 15 December 2008. It was Mrs Devoy's position, as with her brother Mehran Ghorbani, that Homei Azimi was the true owner of the property, and that the purchase price was agreed between her and Mehran Ghorbani. In his interview with the SFO Mehran Ghorbani had not mentioned this alleged involvement by Mrs Azimi, saying that he was encouraged by Mrs Azimi to purchase the property, and that she assisted him with the deposit by giving him \$27,000 which he said he repaid on 28 December 2008, with another \$10,000 paid to her in September 2008.

[266] It was the Crown's position that Mrs Devoy nominated a purchase price of \$316,000 so as to enable her to apply, on behalf of her brother, for the mortgage of \$279,000 which was effectively the true purchase price as the difference was never paid, notwithstanding Mrs Devoy's evidence. Mr Ghorbani's explanation for not mentioning this aspect of the transaction to the SFO interviewers was that Mrs Azimi, having found out that the Ghorbani brothers were to be interviewed during October 2012, had persuaded him not to mention her by name in the interview as she was under investigation by the Real Estate Agents Institute and did not want her position compromised in any prosecution that might follow. This explanation, to varying degrees, was also given by Mehrdad Ghorbani and Mehrzad Ghorbani in their evidence in explaining why they had either not mentioned Mrs Azimi, or had minimised her involvement in the various transactions. As for Mrs Azimi, she said she had been the agent involved in the sale from Mrs Omidvar. Settlement, which occurred on 19 January 2009, resulted in a surplus of \$17,246.94, after payment of fees and repayment of Mrs Omidvar's mortgage to the ANZ. Mrs Thada Chapman's (then known as Thada Inglin) trust account statement to her client, Mrs Omidvar, shows the balance of \$17,246.94 was paid to her, and not to Mrs Azimi.

[267] While there was cross-examination of Mrs Azimi with respect to later sales of the property and the surplus that arose, it was never put to her that she was the true owner of it

in 2008, and until settlement in 2009 and given the net proceeds of sale were paid to Mrs Omidvar I reject the contention that this was Mrs Azimi's property.

[268] Mrs Devoy knew the difference between the purchase price for the property and the mortgage applied for from Westpac would have to be made up in cash contributed by her brother who had no assets. She wrote to Mrs Matheson of Westpac on 2 December 2008 confirming that her brother would pay \$37,000, and also advising that he had already paid a \$10,000 deposit. Her evidence, and for that matter her brother Mehran Ghorbani's, was that the \$10,000 was paid to Mrs Azimi, and both said she was the true owner of the property. Neither proposition was put to Mrs Azimi. As I have rejected the assertion that the property at the time of sale was Mrs Azimi's I am drawn to the conclusion that the evidence of Mrs Devoy and her brother on the issue of payment of \$10,000 to Mrs Azimi was misleading.

[269] Further, on 2 December 2008, in support of the contention advanced by Mrs Devoy that her brother had paid \$10,000, a written confirmation of payment and receipt of the same dated 17 September 2008 was forwarded to the Bank under the W & E Devoy facsimile header. Mrs Omidvar purported to confirm receipt of the deposit of \$10,000 and Mr Mehran Ghorbani purported to have paid the same. Consequently payment was supposedly made to someone other than Mrs Azimi, the person named in evidence at trial by Mrs Devoy and Mr Mehran Ghorbani as the payee. Another unusual feature was that the signature of Mrs Omidvar, purportedly witnessed by Nasrin Kardani, bore little resemblance to Mrs Omidvar's signature as it appeared on her driver's licence. The same point can also be made with respect to the agreement for sale and purchase signed by her as vendor. It was put to Mrs Devoy that she had forged her mother's signature on the agreement for sale and purchase, but she denied the same and in the absence of handwriting evidence the point cannot be taken further. Nevertheless I am satisfied that a deposit was never paid and the representation made to Westpac that it had been was false and misleading.

[270] The other aspect of the deposit was that Mrs Devoy forwarded a written receipt from her mother, acknowledging payment of \$37,000 as a deposit from Mehran Ghorbani, to the Conveyancing Shop, the trading name for the solicitors acting for Mrs Omidvar. The receipt was dated 14 January 2009 and again the signature, which purports to be that

of Dana Omidvar was, even in the absence of expert evidence, recognisably different to that which appears on her driver's licence. It was again put to Mrs Devoy that she had forged that signature, but she denied the same and the point cannot be taken further, and in any event does not appear as a particular to support the counts with respect to the sale to Mehran Ghorbani. Nevertheless it is clear that \$37,000 was not received by Mrs Omidvar. I am satisfied these monies were never paid, and were never meant to be.

[271] In cross-examination it was put to Mrs Azimi that it was her who had sent the receipt on, but she denied that. The document, purportedly by Ms Omidvar acknowledging receipt of \$37,000 was one of ten pages sent from a facsimile machine with the heading W & E Devoy on 15 January at 07:15 am. The first page, using the All Baanks logo, had a handwritten note by Mrs Devoy in which she wrote "*Docs that you requested yesterday*". The agreement for sale and purchase was included with the documents. Consequently I am satisfied it was Mrs Devoy who sent the receipt supposedly signed by her mother to the solicitors.

[272] The Bank had been told, with respect to the application, that Mr Mehran Ghorbani was going to pay \$10,000 from the savings of \$15,000 shown in his bank account. His father was to provide \$25,000 as a gift. This was noted in Bank diary notes of 21 October 2008. There is no suggestion in those notes that the \$10,000 had already been paid to the vendor in the preceding month.

[273] When the loan offer issued the Bank required confirmation the gifted funds of \$25,000 were held in Mehran Ghorbani's account by way of a current bank statement. Mrs Devoy solved this problem in the usual way by sending a typewritten note dated 2 December 2008 from her father, stating that he would gift his son \$25,000 and that the money would be transferred from his personal account. Arrangements were then made, according to Mehran Ghorbani, to borrow \$27,000 from Mrs Azimi and on 19 December 2008 monies for that sum were deposited into an ASB account in his name. An interim account statement from ASB was faxed to Westpac on 24 December 2008 by Mrs Devoy and showed the account in credit to \$27,000. The monies were subsequently all withdrawn from the ASB account and, according to Mehran Ghorbani, repaid to Mrs Azimi on 28 December 2008. Westpac was deliberately misled by Mrs Devoy into believing the monies would be used for the purchase as part of Mr Mehran Ghorbani's cash contribution.

Mrs Devoy's defence to that was that she did not know the monies would be withdrawn and accordingly did not know the documents were false and misleading. I do not accept that, given her pivotal role in the fraud on the Bank.

[274] The statements to the Bank were clearly untrue. Mehran Ghorbani and Mrs Devoy's father did not make a payment of \$25,000 to Mehran Ghorbani to assist him with the purchase. The evidence shows that. The Bank was led to believe that he had these monies, plus an additional \$2,000 in his ASB account but that was, on Mehran Ghorbani's evidence, money that was given to him by Mrs Azimi and returned to her on 28 December 2008, so that money was never used for the purchase. Mrs Azimi was never cross-examined on the point and so there is no satisfactory evidence that she provided those monies to him in the way he said. Certainly I would not accept Mehran Ghorbani's account given that I have found much of his evidence to be untruthful. He was not a reliable witness.

[275] Mrs Chapman's firm, known as the 'Conveyancing Shop' which acted for both parties on the transaction, gave Mr Ghorbani a credit of \$37,000 for the deposit on settlement so that only \$279,251.96 had to be paid after adjustments for rates. This I am satisfied was the true purchase price for the property and the Bank was deliberately misled by Mrs Devoy and her brother over the purchase price and over payment of the deposits. Mehran Ghorbani has pleaded guilty to that count, but I am satisfied that Mrs Devoy was part of the deception and played an important role in it in convincing the Bank that the purchase price was \$316,000, which she knew to be false, and that deposits totalling \$37,000 had been paid. I am satisfied she also knew that information to be false but provided it with the intention of deliberately misleading the Bank.

[276] The provision of false and misleading documents for this count, as with the other counts, again has Mrs Devoy at their centre. The inference is overwhelming that she paid a full part in deceiving the Bank by making the false representations referred to in the particulars of the count and with the intention of deceiving the Bank. She knew the representations were material to the Bank. Had they known of the falsity of them the loan application would have been declined, and plainly the representations were made without claim of right. Accordingly I am satisfied that the Crown has proved each and every

element of this count to the required standard against Mrs Devoy and she is guilty of the same.

### **Count 7 – 3/78 Paihia Road, One Tree Hill**

[277] This count arises as part of the deception of Westpac on the mortgage application and in the supporting documents forwarded to it by Mrs Devoy in December 2009. The particulars for the count are that the loan application represented that, for the purposes of purchasing 3/78 Paihia Road, Mehran Ghorbani who signed the application, was working for Stresscrete earning \$4,056 net per month, and had no other mortgages in his name at the relevant time.

[278] Mr Mehran Ghorbani was also charged jointly with Mrs Devoy but pleaded guilty to this count. He accepted in his evidence that he never worked for Stresscrete. That was a company his brother, Mehrzad, worked for.

[279] Mehran Ghorbani, in his evidence, admitted telling the SFO interviewer that he had obtained a copy of his brother's payslip and had swapped his name with his own using Photoshop or another software application. He said his brother, at that time, was using his bank account for payment of his wages. He agreed he passed the altered bank statements and payslips to Eli Devoy to forward to Westpac to support his mortgage application.

[280] His evidence, however, changed at trial from that said in his interview in that he said it was Homei Azimi who took the bank statements and payslips from him and had them altered.

[281] I do not accept Mr Ghorbani's evidence on this point. I am satisfied that Mrs Azimi had nothing to do with the creation of the plainly false documents that were used to support the loan application. I accept that the transactions involving this property were one of the charges faced by Mrs Azimi before the Real Estate Agents Disciplinary Tribunal. The fact that she was found guilty by that Tribunal of being so reckless in the relevant transactions in which she was involved as an agent as to meet the test of misconduct under s 73 of the Real Estate Agents Act 2008, by allowing her name and that of Barfoot & Thompson on sale and purchase transactions involved in what was described as 'mortgage ramping' does

not mean she was involved in the actual creation of the documents themselves, or in the submission of them to the Banks or the relevant solicitors. In any event, for this transaction she was not the agent involved as it was a private sale between Mrs Omidvar and her son facilitated, I have no doubt, by Mrs Devoy.

[282] I am satisfied that Mrs Devoy knew that her brother, Mehran Ghorbani, did not work for Stresscrete and it was her other brother, Mehrzad Ghorbani, whose payslips had been altered, that did. I have already rejected her contention that she knew nothing of her brother's employment details. She was the pivot for the mortgage frauds perpetrated on the Banks and had the requisite knowledge as to the material that the Banks would require before approving the loan. Her evidence that she was unaware that her brother Mehran was working for Stresscrete, and that the payslips and BNZ Bank statements in his name had been 'doctored' to support this, is simply untruthful. I have already referred to other evidence with respect to other counts in which I have found that she submitted false payslips on behalf of members of her family. She knew the reference to Mr Mehrdad Ghorbani's prior employment by Giga in the application was untruthful. She submitted false employment details for her sister-in-law Melica Nejad, a particular supporting Count 14. For her to attempt to persuade the Court that she was unaware of the facts in relation to the Stresscrete payslips and her brother's representation on the application that he worked there is not credible.

[283] The other aspect of the false representation that supports count 7 is the representation at the time Mehran Ghorbani made the application for a mortgage loan from Westpac he had no other mortgages in his name. He made that representation on the mortgage application and accepted in his evidence at trial that he had not disclosed he had a mortgage to the ANZ over the property he then owned at 174 Main Road North. He accepted that at the time he made the application to Westpac for a loan secured by mortgage against 3/78 Paihia Road, Mrs Devoy was aware that the Christchurch property was mortgaged.

[284] Mehrdad Ghorbani said in his evidence that he was advised by Mrs Devoy that he was required to sell the Christchurch house first, and when he came to sign the mortgage application for the Paihia Road property he said he told his sister that there was an agreement to sell the property in existence which would be unconditional within two or

three days and accordingly she thought, at the time the application was lodged, that it was. Mrs Devoy's evidence was similar and was to the effect that she believed the sale of the Christchurch property to be unconditional by the time the loan application was submitted, but later found out that it did not proceed.

[285] The Crown submission is that the explanation was manufactured by Mrs Devoy, and presumably also by Mehran Ghorbani who gave evidence to support it, and the evidence ought to be rejected. If I thought that Mrs Devoy had an honest belief that the Christchurch property was subject to an unconditional sale then I would give her the benefit of the doubt, but I am not of that belief given her role in these transactions. Her conduct with these frauds is such that her evidence on this point cannot be accepted. The Christchurch property was not sold until January 2010. No copy of an agreement for sale and purchase for the transaction that was said to have been entered into, but did not proceed, was produced. There is no documentary evidence to support the proposition that an agreement had been entered into but was unable to proceed. Given Mrs Devoy had no hesitation in entering false details on an application to the Bank for Mehran Ghorbani, and providing false documents in support, she would hardly have drawn the line at a misrepresentation concerning mortgages held with another Bank. Her evidence and also her brother's on the point was untrue and fabricated to provide a defence to the particulars in the count.

[286] Overall, therefore, I am satisfied that the Crown has proved each and every element of this count against Mrs Devoy to the criminal standard of proof. She, knowing the representations were false and would be relied on by the Bank, included details in the loan application for her brother, Mehran Ghorbani, so as to obtain mortgage finance from Westpac representing that he worked for Stresscrete earning \$4,056 net per month and had no other mortgages in his name at the relevant time. She did so with the intention of deceiving the Bank and ensuring that the application proceed when, had the true position been known, it would not have. The particulars were material to the Bank. There is no issue of claim of right and accordingly Mrs Devoy is guilty of count 7 of the indictment.

**Count 25 – 3/78 Paihia Road, One Tree Hill, Auckland**

[287] Count 25 is the last count that concerns 3/78 Paihia Road. The property was sold to Ben Ferrari, another Persian associate of the Ghorbani family, on 20 July 2010 for \$210,000. That amounted to \$106,000 less than the purchase price paid by Mr Mehran Ghorbani to his mother in January 2009. Mr Ferrari's evidence was that he was approached by Mrs Devoy and asked if she could use his name and credit for two or three months to take ownership of the property so as to avoid a mortgagee sale. After the purchase by Mehran Ghorbani the mortgage fell into arrears and was at risk of a mortgagee sale. At that point Mr Ferrari was introduced to purchase the property at a lower price than that paid by Mr Ghorbani, with false documents being created and provided to the Bank, in Mr Ferrari's case, Westpac, to support a mortgage application. The Bank advanced \$178,500 to enable the purchase for \$210,000 to take place.

[288] The property had been acquired by Mehran Ghorbani on 19 January 2009. By March 2010 a Property Law Act Notice had been issued by Westpac Banking Corporation. It is reasonable to assume that the mortgage had been in default at that point for at least a month. On 30 March 2010 an agreement for sale and purchase was entered into between Mehran Ghorbani and Nasrin Raisey for \$210,000 for settlement on 18 May 2010. Barfoot & Thompson were the real estate agents involved.

[289] By June 2010 that transaction had not settled and so a clerk at Westpac dealing with recoveries wrote to Mr P Philpott, a solicitor at the Home Transfer Centre, who was acting for Mr Mehran Ghorbani, noting that the Bank settlement notice was due to expire on 7 July 2010 and threatening to proceed with a mortgagee sale unless the agreement between Mr Ghorbani and Mrs Raisey settled. Consequently a Deed of Nomination was signed on 6 July 2010 nominating Mr Ben Ferrari as the purchaser. That agreement settled on 20 July 2010. The purchase price was \$210,000, which was less than the amount owed to Westpac Banking Corporation under its current mortgage. A mortgage of \$178,500 was obtained for Mr Ferrari from Westpac and a Bank cheque was paid by Mr Ferrari for \$26,125.75 on account of the cash contribution for the purchase, to his solicitor, Shean Singh, on 20 July 2010. Mrs Devoy drew the monies from her Kiwibank account on that day to provide the Bank cheque. As I am satisfied that no monies were paid by Mr Mehran Ghorbani on the original purchase, the funds introduced as the difference between the



mortgage advance and the purchase price of \$210,000 represent the only cash contribution to this property which remained under the control of Mrs Devoy. Accordingly, I accept the expert evidence of SFO forensic accountant, Mrs Margaret Miller, that the introduction of Mr Ferrari was simply a means of Mrs Devoy and the Ghorbani family maintaining control over the property.

[290] The next step in the process was to sell the property for a higher price than that for which it was acquired, thus 'ramping up' the price. That occurred when the property was sold by Mr Ferrari to Ms Fatemeh Saei, another Persian who had been befriended by Mrs Devoy. The property was sold to her on 12 August 2010, three weeks after the purchase by Mr Ferrari settled, and was for a purchase price of \$310,000. New Zealand Home Loans, a division of Kiwibank, provided \$250,250 to assist with the purchase. The agreement followed the usual pattern of being a private sale, following the sale through Barfoot & Thompson in the preceding transaction.

[291] Count 25, a count pursuant to s 240(1)(a) of the Act is one faced solely by Mrs Devoy and relates to the mortgage application that was lodged on behalf of Ms Saei by Mr Patrick Pardo, a mortgage broker to whom Mrs Devoy would refer clients. She provided the documentation needed to support the application to New Zealand Home Loans. Throughout, Mrs Devoy dealt with the solicitors involved in the transaction as well as Mr Pardo. The particular which supports the charge concerns a representation she made in the form of a facsimile sent to Vivien Shen, a legal executive in the employ of Shean Singh, the solicitor who acted for Mr Ferrari on the property, that Ms Saei had paid \$60,000 directly to him as a deposit. With this supposed payment and the mortgage advance of \$250,250 from New Zealand Home Loans, the matter was able to settle because of the representation and Ms Sheryl Lundon, a legal executive at the Property Law Centre, gave a credit of \$60,000 on the settlement statement on behalf of the vendor.

[292] The monies were never paid. Ms Saei confirmed in her evidence that none were paid to Mr Ferrari, and he accepted none were received by him. Neither party ever went to the property and both said in their evidence that they regarded the property as being Mrs Devoy's, they effectively only acting at her request to assist her. Mrs Miller also confirmed that her analysis of the transaction and the documents surrounding it also showed no payment was made.

[293] With only the mortgage obtained by Mr Ferrari from Westpac to be repaid from the mortgage advance of \$250,250, a surplus of \$70,652.72 arose on the transaction. That surplus was paid to a Westpac account registered in the name of Mr Ferrari with funds in the same amount direct credited on 25 August 2010 to a Kiwibank account in the name of Eli Devoy.

[294] The defence offered was simply that the information was given to Mrs Devoy by Mrs Azimi and she simply acted as Mrs Azimi's 'PA' by forwarding the documents on to Mr Pardo to forward to the Bank. She was unable to offer any explanation in cross-examination as to why none of the documents implicated Mrs Azimi, and said "*I was trusting her 100% and if she was asking me to do anything I would do it, because that was part of my job as a PA*". In submission counsel for Mrs Devoy accepted that it was Mrs Devoy who asked Mr Ferrari if he would purchase the property in his name to assist her brother, Mehran Ghorbani. However it was submitted that the sale of the property from Mr Ferrari to Ms Saei was promoted by Homei Azimi, notwithstanding Mrs Devoy had Mr Ferrari sign the agreement for sale and purchase.

[295] There is no evidence to implicate Mrs Azimi in this transaction. There was no obvious interest for her to become involved. The transactions were brought about to stop the Bank selling the property by mortgagee sale. By ramping up the purchase price for the last transaction a surplus of money was obtained which was paid to Mrs Devoy. The property was, through the series of transactions, maintained for Mrs Devoy and the Ghorbani family.

[296] Consequently I am satisfied beyond reasonable doubt that the Crown has proved each and every element of the count against Mrs Devoy. She was aware of the false representation made to the solicitors that a deposit of \$60,000 had been paid by Ms Saei to purchase the property. She made the representation herself. She knew no monies had changed hands. Her intention in making the false representation was to deceive the solicitors. It was material to the transaction as it meant that Mrs Devoy's nominated purchaser, Ms Saei, paid \$60,000 less for the property than she was required to do under the agreement for sale and purchase which Mrs Devoy had her nominated vendor, Mr Ferrari, sign.

[297] Accordingly I find Mrs Devoy guilty of this count.

**Count 11 – 29 Chorley Avenue, Massey, Auckland**

[298] At trial only one accused, Hassan Salarpour, faced this count, Mrs Devoy having earlier pleaded guilty. The count was one of obtaining credit by deception, namely a mortgage advance in the sum of \$292,000 from Southern Cross Building Society which assisted Mr Salarpour to acquire 29 Chorley Avenue. The false representation was contained in the loan application presented to Southern Cross by Mrs Devoy on behalf of Mr Salarpour, but signed by him, and was to the effect that he worked for Giga earning a gross annual income of \$62,500 and that he had \$108,800 in a bank account. Mrs Devoy's explanation for her guilty plea was that she felt morally responsible as she learned later that Mr Salarpour did not work full time for Giga. That explanation is plainly implausible.

[299] Mrs Devoy had prior to trial sought leave to vacate a number of guilty pleas she had made on an earlier indictment. She did not, however, apply to vacate her guilty plea on count 11 but, oddly, disputed each element of the count insofar as it concerned her own actions. She said she did not intentionally deceive Southern Cross, believed Mr Salarpour was working at the time and did not have any separate knowledge of his earnings other than what was shown on the material produced to her. She said that she did not know the information presented to her for the application and supporting documents was false, and the information was provided to her by Mrs Azimi including a claim that Mrs Azimi had told her that Mr Salarpour had \$108,000 in his bank account. This is one of many accusations against Mrs Azimi made from the witness box by Mrs Devoy but which was never put to Mrs Azimi when she gave evidence.

[300] I unhesitatingly reject Mrs Devoy's assertions. As a witness to truth she was utterly unreliable. She played a full part in the deception of Southern Cross, as she had with the various Banks referred to in other counts mentioned in this verdict, and had earlier correctly acknowledged her guilt. The way she approached her evidence in relation to the count is just one more instance of her general unreliability as a witness.

[301] I accept Mrs Azimi had some role in the acquisition of 29 Chorley Avenue, in that she said it was purchased for her and Mrs Devoy but with the purchase in Mr Salarpour's

name. By 2009, when the property was first purchased, Mrs Azimi and Mrs Devoy's friendship was firmly established. They were, as Mrs Azimi said, always looking for opportunity to undertake business together. They had acquired an accounting franchise from Mr Parore, Small Business Accounting ("SBA") which operated at premises in Penrose owned by Mrs Azimi. Next to those premises were Giga and it was clear from the evidence of the proprietor of Giga, Mr Farhard Jabbari, that there was some interaction between the businesses, Mr Jabbari undertaking some repairs from time to time to SBA's computers. Mr Jabbari thought Mr Salarpour had been introduced to him by Mrs Azimi, and thought Mrs Devoy may also have been involved, his evidence being that effectively the two worked in concert, similar evidence being given by a number of other witnesses.

[302] Mr Salarpour's evidence was that he came to New Zealand in 2007 and subsequently married Mrs Devoy's sister, Ella Ghorbani, described by her brother, Mehrzad Ghorbani, at his SFO interview as "*the only clean one in the family*". Mrs Devoy was a great help to him at the time of his arrival in New Zealand and the years immediately afterward. She assisted with his migration to New Zealand and also that of his wife's, and paid the necessary fees. He was not fluent in English but obtained work with Giga either through her or her close friend Homei Azimi, and in 2009 he and his wife were living as tenants at 3/78 Paihia Road, a property she contracted. He described at interview, accurately I believe, the relationship between Mrs Azimi and Mrs Devoy saying that the two spoke on the phone all the time, and they worked together on property deals effectively as partners, Mrs Azimi locating properties and his sister-in-law doing "*mostly financial part*". Given this count, as with the others, relates to what occurred on the "*financial part*" his evidence further supports the view that Mrs Azimi had no role in the provision of documents that were fraudulent.

[303] No issue was taken with the false nature of the documents, the defence simply being that Mr Salarpour was unaware of what had been signed and therefore did not deliberately mislead Southern Cross. Mr Salarpour said that he reluctantly agreed to allow his name, at Mrs Devoy's request, to be used in purchasing properties. He did so as he felt that he and his wife were obligated to Mrs Devoy for the considerable assistance she had given them since he arrived in New Zealand in 2007. He allowed Mrs Devoy to operate a bank account in his name. Consequently he agreed to lend his name to the purchase of the

property at 29 Chorley Avenue, effectively for his sister-in-law and her friend. Mrs Azimi had located the property in the course of her occupation as a real estate agent.

[304] The property was purchased pursuant to an agreement for sale and purchase dated 22 September 2009 with Mr Salarpour as the purchaser and the vendor BW (2004) Limited. The purchase price was \$363,000 made up of a mortgage advance of \$292,000 from Southern Cross with a cash contribution for the balance. Mrs Azimi paid the cash contribution herself by providing a Bank cheque for \$73,923 to the purchaser's solicitor. Subsequently when the property was sold she received \$78,623 being the return of the monies she had advanced as the cash contribution and a profit of \$4,700. Mrs Devoy received \$40,300 from the net proceeds of sale when the property was subsequently sold.

[305] The mortgage application to Southern Cross was in the name of Mr Salarpour and was purportedly signed by him. It contained the two representations that were untrue, namely that he had \$108,800 in a BNZ account and, secondly, that he worked for Giga earning \$62,500 annually. Documents were supplied by Mrs Devoy to Southern Cross to support those representations in the mortgage application. One was a signed letter on Giga letterhead affirming an annual salary of \$62,500 and purportedly signed by Mr Jabbari who denied in evidence that the signature was his and that the letter had been produced by him. Payslips were also supplied supporting the representation that Mr Salarpour was earning a gross salary of \$5,198.60 each month. Those payslips were false documents plainly constructed for the purpose of the mortgage application.

[306] As for the letter, Mr Jabbari confirmed that Giga letterhead was produced in electronic format at his office. It is possible one was obtained by Mr Salarpour in that way, but no more than that. Mr Jabbari suggested in his evidence that the letter, purportedly under his hand, had been produced by 'cut and paste' from someone who had access to a physical letter generated by Giga. Among the documents found at Mrs Devoy's home by the SFO was a letter for Mr Ramin Yazdanlatif on Giga letterhead, which Mr Jabbari thought was a genuine letter. Mrs Devoy confirmed Mr Yazdanlatif was a client of SBA Penrose. That letterhead was very likely copied and became part of the false document concerning Mr Salarpour's income that was submitted to Southern Cross by Mrs Devoy.

[307] Mr Jabbari confirmed in his evidence that his company did not issue payslips. The payslips themselves were similar in format to payslips that were false and which were supplied to Banks and are referred to in evidence for other counts, for example count 7. Mr Salarpour accepted that the copy of the ASB Fastsaver account sent under his name to support the contention that he had \$108,886.18, or \$108,800 as it was shown in the loan application, in his bank account was false. He denied in his evidence that the signature on the loan application purporting to be his was his, and at his interview, when asked about the signature had been unsure whether it was, indicating that it was similar but he was not sure of it. Mrs Devoy in her evidence said that Mr Salarpour had never seen the application.

[308] Mrs Devoy said in her evidence that she accepted the details on the application were false, but said they were details given to her by Mrs Azimi and she had no reason, at the time, to believe they were false. I do not accept that. Mr Salarpour was Mrs Devoy's brother-in-law. She was the one who dealt with him and took him to Southern Cross where he signed a document on 30 October 2009 confirming that the details in the loan application form had not changed. She dealt with Southern Cross at all times and forwarded the documents to the Building Society. I am quite satisfied that Mrs Azimi had nothing to do with the construction of the false documents, it was Mrs Devoy who was dealing with the financial matters, and the false documents and the false statement in the application originated with her.

[309] The issue is whether Mr Salarpour knew what had been represented in the loan application form. There was no expert handwriting evidence to establish the signature on the loan application was his and I am satisfied, having seen the DVD of his interview with the SFO interviewers, that he was genuinely puzzled over the signature. There were no admissions at interview. I am not satisfied that he knew of the contents of the loan application. Although he signed a document at the offices of the Southern Cross saying that the financial position as detailed in the loan application form had not changed, there was no evidence he was shown the content of the loan application form before signing that document, and he was with Mrs Devoy at the time. He was not fluent in English and trusted her completely. There was no contact between him and the Southern Cross other than with Mrs Devoy. While he agreed to lend his name to the purchase, it seems clear to me that he left all of the details with respect to the same to Mrs Devoy. Therefore I cannot

be satisfied beyond reasonable doubt that he made the representations, insofar as the loan application is concerned, knowing them to be false. Accordingly I find Mr Salarpour not guilty of count 11.

### **Count 19 – 29 Chorley Avenue, Massey, Auckland**

[310] This count concerns the on-sale of 29 Chorley Avenue to Ms Kardani for \$462,000, the agreement for sale and purchase being entered into on 23 December 2009, only three weeks after the settlement of the purchase by Mr Salarpour. The sale price to Ms Kardani was approximately \$100,000 more than the purchase price for the property paid some weeks later, a further example of how properties were ‘ramped up’, with borrowing secured against the re-sale sufficient to produce a surplus or profit for Mrs Devoy, and in this case Mrs Azimi, on the transaction.

[311] Ms Kardani was used as the ‘dummy purchaser’ and she is charged under this count with obtaining credit, in the form of a mortgage advance of \$423,451 from New Zealand Home Loans without claim of right and by deception. New Zealand Home Loans is not a registered bank but is an agent for Kiwibank Limited. It had its own network of mortgage brokers.

[312] Mrs Devoy had also been charged with this count but had pleaded guilty prior to trial. The representations in the loan application, said to amount to false representations intended to deceive the mortgagee, were that Ms Kardani worked for Stylish Homes earning an annual income of \$77,500 and that she had Bank funds totalling \$75,000.

[313] Notwithstanding her guilty plea, and not having applied to vacate that plea, Mrs Devoy refused to acknowledge any wrongdoing in respect of the count saying that she was merely a PA acting on behalf of Mrs Azimi in relation to the transaction. I do not accept her evidence on this point. Her ‘footprints’, to use an expression, are all over the transaction. She met with Mr Pardo, a mortgage broker for New Zealand Home Loans, who handled the successful application, and she provided him with the necessary documents, including false statements showing an ANZ term deposit amounting to \$75,000 and the false employment details used to support the loan. There is documentary correspondence from her concerning the loan and a file note from Mr Pardo’s partner,

Melinda Baker, on a typewritten letter sent by facsimile on 25 November 2009, referring to conversations about the mortgage that Ms Baker had with her. The facsimile heading W & P Devoy had been removed from the top of the facsimile transmission but the other details showing the placement of the date and times and the number of pages are similar in form to facsimiles sent earlier from the W & P Devoy facsimile. In addition the note has the word 'urgent' handwritten at the top of the page in Mrs Devoy's handwriting, as she acknowledged. While Mrs Azimi certainly had an interest in the property, as she accepted in cross-examination, the mortgage application was, I am satisfied, handled by Mrs Devoy.

[314] Ms Kardani was living in a relationship with Mrs Devoy's brother at the time. At interview she said she asked Mrs Devoy to assist her with purchasing a home, and it was intended that the property would be for her. The issue is, what did Ms Kardani know of the false representations as to income and Bank funds that were made to New Zealand Home Loans to be able to secure the loan.

[315] Mr Pardo said in his evidence that he met Ms Kardani once prior to the purchase of this property. That was at Mrs Devoy's home when he was introduced to her by Mrs Devoy. This discussion was not specific to the property as the property she wished to purchase had not, according to Mr Pardo, been identified. In the course of that conversation he asked Mrs Devoy about her husband, Warren Devoy, and why he was not being used as the broker. She said she said to him that "*he is not talking good about her community*" and there were difficulties in their marriage. Subsequently 29 Chorley Avenue was identified as the property Ms Kardani was to purchase and on 25 November 2009 a typewritten letter was faxed from Mrs Devoy's facsimile to Mr Pardo, purportedly signed by Ms Kardani, advising Mr Pardo that she had made an offer to purchase that property and was seeking a loan of at least 90%. The typewritten letter said that she was a Sales Manager for Stylish Homes and her salary was \$85,000, and she had saved a deposit of \$75,000. The facsimile number that he was told he could use was Mrs Devoy's number, as was the cell phone number. Mr Pardo's partner, Ms Baker, phoned Mrs Devoy and was told that all requirements could be faxed to her as Ms Kardani was going away on 27 November 2009, and in the course of trial Mr Barron-Afeaki SC produced evidence which confirmed Ms Kardani was away from Auckland from 27 November 2009 until 29 November 2009 at Rotorua.



[316] The initial New Zealand Home Loans critique form was completed by Mr Pardo from information supplied to him by, he said, Nasrin Kardani, by phone. It was a form Mr Pardo said that brokers for New Zealand Home Loans filled out from information from their client. Included in the form was a representation that Ms Kardani had been working as a Sales Manager for Stylish Homes for two and a half years and earned \$85,000 and had approximately \$85,000 in savings as a deposit. The critique form, as it was called, indicated that a joint application was contemplated, the other applicant being Ryan Kent, a software programmer, earning \$75,000. The earnings for Ms Kardani on the application actually forwarded to the mortgagee were shown as \$77,500, not \$85,000 as recorded in Mr Pardo's loan critique form.

[317] At interview Ms Kardani said she met Mr Pardo at the suggestion of Mrs Devoy and she said she signed the loan application, something she denied at trial. She said that she knew from Mr Pardo that her income might not be sufficient to secure mortgage finance to be able to purchase the property and consequently she arranged for the false Stylish Homes earning details to be supplied, having asked Mehrdad Ghorbani for a letter to support the claim that she was working for that company. She also stated that she had never had savings of anything like \$75,000 in a bank account.

[318] Stylish Homes has previously been discussed in relation to count 13. The company was not successful and did not have any fulltime employees. No-one, not even the directors, was able to earn an income of \$77,500 from it. In any event, Ms Kardani's income from that company was only as a part-time seller of luminous house numbers and, as she accepted, her income from the company did not approach that mentioned to Mr Pardo or referred to in the documents sent to him.

[319] In her evidence at trial Ms Kardani distanced herself from what was said at interview. Despite her concessions at interview she said she knew nothing about the loan application or any of the documents submitted in support of the application. She denied meeting Mr Pardo. She aligned herself with the Ghorbani family tactic of blaming Mrs Azimi and when asked why she had not mentioned Mrs Azimi's alleged involvement at interview, said she was scared of becoming bankrupt and losing her property. I found her evidence on these matters, as I had in respect of count 20 which concerned her

purchase of 10B Heretaunga Avenue with Mehrdad Ghorbani at approximately the same time as the purchase of 29 Chorley Avenue, to be unconvincing and untruthful.

[320] At trial Ms Kardani insisted that 29 Chorley Avenue was really Mrs Azimi's property and she said she did not need to buy another property, especially around that time, yet at interview she gave a long explanation as to how she came to purchase the property which involved her sister who she thought was going to return from the United States and adopt a child, and wanted to buy a property that Ms Kardani was then living in at 1B Fordyce Avenue, and so Ms Kardani needed to find something for herself and settled on 29 Chorley Avenue after being told of the property by Mrs Devoy. She was also associated with the purchase of 10B Heretaunga Avenue with Mr Mehrdad Ghorbani at about this time and for which I have already found, in relation to count 18, she played an active part in misleading the solicitors and in turn the mortgagee Bank in convincing them that she had a cash contribution of \$110,000 for the purchase. This is yet another count in which the defendant's conduct with respect to one or more properties can constitute evidence relating to others and shows how clearly Ms Kardani was willing to assist the Ghorbani family in these frauds. It is hard to disagree with the Crown submission that Ms Kardani was a poor witness who repeatedly lied at trial. Her evidence contradicts what she said to the SFO interviewers and I am satisfied that the more reliable answers are those given to the SFO. By the time of trial Ms Kardani had clearly adopted the family strategy of denying responsibility for anything and laying the blame at the door of Mrs Azimi.

[321] I am quite satisfied that both Mrs Devoy and Ms Kardani were deliberately misleading New Zealand Home Loans by making false representations as to Ms Kardani's income and assets to its broker, Mr Pardo. Both knew these to be false. Mrs Devoy, as the sister of Mehrdad Ghorbani, would have been aware of his involvement with Stylish Homes and would have known how unsuccessful the company was, and that Ms Kardani could not possibly have earned \$85,000, or the \$77,500 stated in the application, from it. Ms Kardani's explanation for the difference between what she said at interview and at trial was that she was overwhelmed, shocked and stressed at the interview, but having watched the interview that was not in the least apparent, Ms Kardani being co-operative and fully answering questions asked by the interviewers.

[322] I am satisfied that Ms Kardani provided Mr Pardo with information that she was earning \$75,000 from Stylish Homes and had substantial monies in a Bank and that this information was recorded by him on his loan critique form, and came from her. While she may have been absent from Auckland at the end of November that was only for a few days and documents faxed to Mr Pardo by Mrs Devoy were sent with Ms Kardani's knowledge and consent. It is the only reasonable inference that can be derived from the facts as I have found them to be. False payslips purportedly from Stylish Homes supporting the income claimed were faxed to Mr Pardo by Mrs Devoy. While Mrs Devoy may have created those payslips, knowledge that it would be represented to New Zealand Home Loans that Ms Kardani earned \$77,500 from Stylish Homes was knowledge known to Ms Kardani at the time and relayed by her orally to Mr Pardo.

[323] Consequently I am satisfied beyond reasonable doubt that Ms Kardani, together with Mrs Devoy, without claim of right, and by deception made false representations, the representation being material to the mortgagee and intended to deceive Mr Pardo, and through him the mortgagee, New Zealand Home Loans Limited, by falsely stating in her application that she had Bank funds totalling \$75,000 and worked for Stylish Homes receiving \$77,500. Without those false representations the loan application would not have been approved, a fact known to Ms Kardani as she had earlier been told by Mr Pardo that the initial income levels she discussed with him were unlikely to be sufficient to support a loan.

[324] Accordingly I find Ms Kardani guilty of count 19 of the indictment.

#### **Count 20 - 29 Chorley Avenue, Massey, Auckland**

[325] Count 20 is the last count in relation to 29 Chorley Avenue and charges Mrs Devoy and Ms Kardani with making a false representation in relation to the purchase of the property by Ms Kardani, namely that she had paid a deposit of \$46,000 to purchase the property. The property was purchased for \$462,000 from Mr Salarpour with a mortgage advance of \$423,451 from New Zealand Home Loans. The difference was to be provided in cash by Ms Kardani from funds New Zealand Home Loans were fraudulently led to believe she had and which were part of the particulars for count 19.

[326] The cash required to settle the purchase of 29 Chorley Avenue after receipt of the mortgage application was \$46,200. At interview Ms Kardani fully admitted that it was never intended to pay a deposit and that the Bank was to be deceived into thinking one was paid. She said:

*Fox: And Mr Salarpour didn't, did he ask for a deposit.*

*Kardani: No.*

*Fox: So why, why not?*

*Kardani: Because I didn't have a deposit to pay.*

...

*Fox: So the loan you obtained was that all the money that went into this property?*

*Kardani: Yes.*

*Fox: Did the Bank know a deposit was being paid?*

*Kardani: No.*

*Fox: Or should I say did the Bank, did the Bank know a deposit was not going to be paid?*

*Kardani: No. No they didn't know that.*

*Fox: And how did you prove to the Bank that you were going to pay the deposit before having paid it? [INAUDIBLE].*

*Kardani: I think we just told them that we're going to do it and obviously it was something like that."*

[327] Later in her interview she denied providing the false Stylish Homes payslips but said the only thing she actually gave the Bank was false proof of a deposit.

[328] The Bank, and the solicitors involved, were told that Ms Kardani had paid \$46,000 as a deposit to Mr Salarpour's nominated account in Iran. A typewritten document purportedly signed by both Mr Salarpour and Ms Kardani to that effect and dated 14 November 2009 was created, in all likelihood, by Mrs Devoy.

[329] Mrs Darsan Singh, the wife of the late Shean Singh, a solicitor practising at Dominion Road in Balmoral, and herself a solicitor, was acting for Ms Kardani on the purchase of the property, and wrote to her on 14 December 2009 asking for a Bank cheque

for \$39,478.36 before 16 December 2009, so as to complete the settlement of the purchase after receipt of the mortgage funds. She was on the same day sent a copy of the signed letter referred to in the preceding paragraph purporting to represent that a deposit of \$46,000 had been paid to Mr Salarpour through an account in Iran. When she gave evidence she said she did not know who sent that letter but there is a facsimile header on one of the copies of the letter which, although it does not have the W & P Devoy tag, has a heading similar to facsimiles sent previously with the name W & P Devoy. I am satisfied it was sent by Mrs Devoy as the same document was sent by her to the vendor's solicitor on that date. It is clear that Mrs Devoy was dealing with Mrs Singh as on 14 December 2009 Mrs Devoy, at approximately 10.41 pm, wrote to Mrs Singh referring to the payment of the \$46,000 deposit and requesting a final amount to pay taking into account apportionments and legal fees. Mrs Singh's reply on 16 December 2009 was a request to Mrs Devoy to bring a Bank cheque for \$1,129.36 to her office, saying "*we are all ready to go, just waiting for you*".

[330] Credit for \$46,000 was given on the vendor's solicitor's settlement statement so that the mortgage monies were the only monies used for the purchase save for the payments made for legal costs and apportionments. As discussed in relation to the preceding count the 'spoils', representing the profit obtained from the mortgage advance, was divided between Mrs Azimi and Mrs Devoy.

[331] I am satisfied no monies were paid to Mr Salarpour's account in Iran. Mr Salarpour's evidence, which I accept, was that he knew nothing about the sale of the property until he was taken to the solicitors, presumably to sign the transfer. His signature, he said, does not appear on the agreement for sale and purchase. The signature which appears on the document dated 14 December 2009 which purports to state that \$46,000 had been received by him in his bank account in Iran was not, he said, his signature. He knew nothing about the document and he never received any monies in Iran. He said after the transaction settled he was taken to the Bank by Eli Devoy and Homei Azimi and he gave them cheques and cash as they directed, drawn from the monies that had been deposited into his account as the net proceeds of sale.

[332] Consequently the representations made to Mrs Singh that her client had paid \$46,000 to Mr Salarpour, and which led to a credit for that amount being given on

settlement by the vendor, were false representations. Mrs Devoy, I am satisfied, sent the note purportedly signed by Mr Salarpour and Ms Kardani to Mrs Singh. She represented in her own handwritten facsimile of 14 December 2009 that the monies had been paid when she knew that they had not been. It was simply another ruse she and Ms Kardani were part of. Mrs Devoy's evidence was that 29 Chorley Avenue was Homei Azimi's property, and it was Homei Azimi who told her the monies for the deposit had been paid. I do not accept that. Firstly, Ms Kardani at interview and Mr Salarpour at trial confirmed no monies were paid, although as far as Ms Kardani is concerned that cannot amount to evidence against Mrs Devoy, it being the statement of a co-accused, but Mr Salarpour's evidence is enough, and secondly, Mrs Devoy managed both sides of the transaction by dealing with the solicitors. Mr Salarpour's solicitor on the transaction was Mr G H W Seton of the Property Law Centre in Greenlane. His legal executive was Ms Lunden who has featured previously. Contact details on his firm's file in respect of the sale noted that Ms Lunden had recorded a note that \$46,000 was to be paid by the purchaser's parents direct to a bank account in Iran to avoid loss on exchange and "*Eli to confirm tomorrow*". The letter of 14 December 2009 purportedly signed by both Mr Salarpour and Ms Kardani also reached the vendor's solicitor's file prior to settlement. It was sent at 9.12 pm on 14 December 2009 as page 2 of a two page facsimile. The first page has a handwritten note from Mrs Devoy to Ms Lunden which reads "*from Hassan will drop the original tomorrow thanks Eli.*".

[333] I do not accept Mrs Devoy's defence that she was merely Mrs Azimi's PA and that she and Ms Kardani were simply the 'middle-persons' assisting Mrs Azimi. Mrs Devoy is squarely at the centre of the false representations made to the solicitors for this count. I accept it is not Mr Salarpour's signature on the receipt of 14 December 2009. I am satisfied that only Mrs Devoy could have placed that signature there. She was aware, as was Ms Kardani, that a deposit would not be paid for that transaction. She adopted the well tried device outlined earlier in this verdict of misleading the solicitors by providing false documentation supporting the payment. She did so without claim of right and she enabled Ms Kardani to obtain the property, namely 29 Chorley Avenue, Massey. Mrs Devoy's intention was plainly to deceive the solicitors.

[334] As for Ms Kardani I do not accept, for reasons I have already outlined, her evidence at trial where she refused to accept she knew anything about the transaction, was merely

acting as a dupe for Mrs Azimi, and resiled from her incriminating answers given at interview. At interview she accepted there was never going to be a deposit paid for the property. Although she disclaimed her signature on the typewritten document dated 14 December 2009 purporting to record payment of the \$46,000 deposit she led New Zealand Home Loans, on her application for mortgage finance, to believe she had Bank funds totaling \$75,000 to use in the transaction and admitted at interview that *“the only thing I actually gave them was the false proof of deposit”*. She was unable to remember whether she had given anything to the lawyers or the Bank saying the money had been paid but she was certainly well aware that for the transaction to proceed both the lawyers and the Bank needed to be deceived on that point. I accept, however, the signature that appeared on the purported record of payment and acknowledgement of receipt dated 14 December 2009 does not resemble her known signature, and no handwriting expert was called to demonstrate that it was. However, Mrs Devoy provided a document which she clearly knew to be false to the solicitors in the form of that signed typewritten letter of 14 December 2009 and Ms Kardani, knowing that a deposit was not going to be paid, and therefore knowing that a fraud would be perpetrated on the Bank and the solicitors would be deliberately misled, willingly lent her name to the transaction. She accepted at interview she signed the agreement for sale and purchase as purchaser and made representations, which she knew to be false, to Mr Pardo who lodged the mortgage application for her that she had sufficient funds to be able to complete the transaction, knowing that she did not.

[335] Accordingly I am satisfied beyond reasonable doubt that Mrs Devoy made the false representation as to payment of a deposit of \$46,000 by Ms Kardani to the solicitors with the intention of deceiving them, and ultimately the Bank, to enable the transaction to proceed. She knew both the Bank and the solicitors would need to be satisfied that the full purchase price had been paid and that the difference between the mortgage application and the purchase price would need to be contributed by Ms Kardani, and so her deception constituted a material particular which led to the deceit of the solicitors and ultimately the Bank. Accordingly I find the Crown has proved each and every element against her beyond reasonable doubt.

[336] Ms Kardani, I am quite satisfied, knew at the time of the transaction that the Bank and the solicitors were going to be deceived over payment of the deposit. She had no

monies herself and for the ‘scam’ to succeed the solicitors and the Bank had to be led to believe that the full purchase price was able to be paid. I reject her evidence at trial that she did not know what was happening in 2009 and that her admissions should be seen in the context of what she knew at the time of the interview rather than what she knew at the time of the transaction. She plainly lied at trial about that. She was well aware, as she said at interview, that if she did not have the money to pay the difference between the mortgage advance and the purchase price the transaction could not proceed as the Bank would not approve her loan. She willingly assisted in the provision of false and misleading documents to the mortgagee, New Zealand Home Loans. The fact that I cannot conclusively determine that it was not her signature on the typewritten document of 14 December 2009 does not mean that I cannot find Ms Kardani guilty as a party in aiding Mrs Devoy to commit the offence by reason of what I have already outlined. Accordingly I am satisfied beyond reasonable doubt that by lending her name to the purchase and by materially deceiving New Zealand Home Loans over her purported cash contribution she assisted Mrs Devoy in the commission of the offence represented by count 20, and so is guilty as a party.

**Count 15 – 1/3185 Great North Road, New Lynn, Waitakere  
and 2/160 Mt Smart Road, Onehunga, Auckland**

[337] Both Mr Salarpour and Mrs Devoy are charged jointly, pursuant to s 240(1)(b) of the Act, of obtaining credit by deception in the form of a mortgage advance of \$620,500 from the BNZ. The deception is alleged to be a false representation in the loan application given as particulars to the count, namely that Mr Salarpour worked for Giga earning an annual income of \$85,000 and Ms Ghorbani, his wife and Mrs Devoy’s sister, worked for the ADHB earning an annual income of \$45,000.

[338] There was no dispute that the representations contained in the loan application concerning the income of the applicants, Mr Salarpour and his wife, Ella Ghorbani, were false. Documents forwarded in support of the representations made in the application were fraudulent, and again that was not a matter in dispute. Neither was it disputed that the false representations were made with the intention of deceiving the mortgagee, the BNZ, so as to enable the mortgage advance needed for the acquisition of 1/3185 Great North Road and 2/160 Mt Smart Road to be obtained. No issue of claim of right was raised. The issue to



be determined was who made the false representations and whether, at the time they were made, either party charged knew they had been made and were false.

[339] Mr Salarpour's employment with Giga was discussed in relation to count 11 where a signed and false letter purportedly on Giga letterhead supporting an annual salary of \$62,500 was used. He no longer worked for the company in 2009. Mr Salarpour's earnings from Giga, as he mentioned in his interview, were never more than \$450 per week and he was paid in cash. There was no formal written contract and no payslips were provided by the company to its employees.

[340] For count 15 false payslips were sent to the mortgagee with the application. A payslip, supposedly from Giga, that was used for this mortgage application was different to the payslip used to support the application, the subject of count 11. The payslip for the latter count was similar to other documents forwarded by Mrs Devoy in support of loan applications, in particular a payslip from Mehran Ghorbani showing him to be earning \$65,000 as a draughtsman for Stresscrete Northern, a payslip from Roya Nasserri showing her to be earning \$77,500 which was used to support an application for her purchase of 23 Glenmore Road utilizing Sovereign as a mortgagee, and a payslip from Maddahi Nejad, Mehrdad Ghorbani's wife, showing her earning \$45,000 as an Office Administrator for the ADHB. That last false representation was made in a loan application for the purchase of 1/37 Richard Farrell Avenue, and was the subject of count 14, a count to which Mrs Devoy pleaded guilty. The false payslip was faxed in support of the loan application from Mrs Devoy's facsimile number. The pattern is such that the only reasonable conclusion is that one person created those documents. However the payslip for Mr Salarpour for this transaction, as noted, was different in format from those other payslips.

[341] Two false payslips were also forwarded, supposedly from ADHB, purporting to show that Ella Ghorbani worked for the Board. Her evidence was she had never seen the payslips and had never been an employee of ADHB. The payslip itself was virtually identical in layout to the payslip supplied for Mr Salarpour for the applications referred to in the particulars for count 11, purportedly showing him as an employee of Giga, although with additional adjustments for a petrol allowance and Kiwisaver. The leave details on the two sets of payslips were identical.

[342] The false ADHB payslips used to apply for the loan the subject of count 15 were nearly identical to those submitted to the Southern Cross in the name of Mrs Devoy's sister-in-law, Maddahi Nejad, and which were the subject of count 14 to which Mrs Devoy pleaded guilty. The only difference was the IRD number for the person said to be employed there. All other details, annual salary, the pay period, annual leave as well as the job description were the same. Mrs Devoy said in evidence that she pleaded guilty to count 14 because she was aware her sister-in-law did not work for the ADHB. The same logic does not seem to have been applied in relation to her plea to count 15 as her sister, Ella Ghorbani, was also falsely represented as an employee at the ADHB.

[343] The payslip used for the loan application to the Southern Cross for count 14 was forwarded by Mrs Devoy as the facsimile details appearing at the top of the document indicating by its layout it emanated from her machine. I accept that does not necessarily identify the sender but when coupled with the fact that she admitted sending a great number of documents for the various transactions from the machine, the account for which was in her husband's name, and with the machine located at her home and given Mrs Devoy's involvement in this transaction I have no doubt that it was she who forwarded the false documents, including the payslips that were used to support the mortgage application. Further, although no facsimile track appears on the payslip for count 15 the fact that the documents are virtually identical to those referred to earlier and which were forwarded by Mrs Devoy in relation to other counts, points very clearly to Mrs Devoy as being the person who created the document and supplied it for the purpose of the mortgage application.

[344] Also supplied to the mortgagee, the BNZ, for the application referred to in the particulars for count 15 were Kiwibank statements in the name of H Salapour and E Ghorbani, which showed the supposed payments of wages into the account from Giga and the ADHB.

[345] As for the Kiwibank statements, they bore remarkable similarity to Kiwibank statements in the name of M G Sarsangi (Mehrddad Ghorbani) and A Nejad, his wife, which were forwarded to the Heartland Building Society to support a loan application. Clearly documents were altered with details and account holders names varied as required for particular mortgage applications. The documents also appeared to be the same as the

Kiwibank statements in the name of Mr Salarpour and his wife which were forwarded to the BNZ.

[346] The mortgage advance of \$620,500 was to enable the purchase of two properties at 1/3185 Great North Road, and 2/160 Mt Smart Road using Mr Salarpour and his wife. The agreement for sale and purchase for 2/160 Mt Smart Road was between Ms Kardani as vendor, and Mr Salarpour and his wife as purchasers, with a sale price of \$310,000. It was signed on 12 November 2009. The agreement for sale and purchase for 1/3185 Great North Road was also signed on that date, both transactions being for settlement on 26 November 2009. Both Mr Salarpour and his wife denied that the signatures and initials on the agreement, purporting to be theirs, were in fact signed and initialed by them. Mr Salarpour said he was not aware at the time of the existence of the agreements. The Great North Road transaction was for a sale price of \$420,000 with the vendor being Ella Ghorbani. By 1 December 2009 the BNZ had already discovered, as a result of an inquiry from ASB, that BNZ bank statements used in an application by Ella Ghorbani were false in that the statements for an account said to belong to her and her husband actually belonged to another customer, Soheila Mohammadyar.

[347] Consequently there was no doubt as to the falsity of the documents created to support the loan application and there was no challenge to that in cross-examination. The loan application itself was signed by Mr Salarpour, as he accepted in his evidence, but there was an issue as to the date it was signed, Mr Salarpour maintaining at trial that it was signed after the loan advance, and not before, so that therefore it could not be said that the Bank relied on any representation by him in approving the loan and subsequently advancing the monies.

[348] It is necessary to resolve that issue before determining whether Mr Salarpour is guilty of this count.

[349] The broker who dealt with Mr Salarpour and his wife's, Ms Ella (Elhameh) Ghorbani's mortgage application to the BNZ was Roshni Golian who in 2009 operated a company called Rosgo Financial Services Limited. She had been introduced to Mrs Devoy by Mrs Azimi as the office from which Mrs Azimi worked, Barfoot & Thompson, was next to Mrs Golian's office. She met Mrs Devoy in connection with Ms Nasrin Kardani's

application to purchase 2/160 Mt Smart Road only a few weeks before acting for Mr Salarpour and Ms Ghorbani on their mortgage application needed for the purpose of the property from Ms Kardani. Mrs Golian said she met with Mrs Devoy on 12 November 2009 at the Rosgo Financial office in Royal Oak to discuss Mr Salarpour and his wife's mortgage application for the purpose of their purchase of the Mt Smart Road property. She received by facsimile from Mrs Devoy, a copy of the agreement for sale and purchase for the transaction on that day.

[350] In her evidence Mrs Devoy denied there was a meeting between Mrs Golian about this transaction and maintained she did not become involved until a later stage, when matters began to go wrong with the BNZ. She denied sending the agreement for sale and purchase to Mrs Golian, although she accepted that it has been written out by her. She claimed that the agreement had been faxed to Mrs Golian from her fax machine by a member of Mrs Azimi's family who had accessed her address and sent the document on. I do not accept Mrs Devoy's propositions, not only because her evidence was unreliable generally, but because Mrs Golian, in support of her contention of a meeting with Mrs Devoy on 12 November was able to refer to her handwritten notes made at the time which set out what was discussed and the arrangements required. Other information or documentation was, on Mrs Golian's evidence, provided by Mrs Devoy on the day following the initial meeting. The property was clearly intended for her although to be held in her sister and brother-in-law's names. There is no doubt she was involved from the very beginning of the transaction.

[351] Mrs Golian also said that Mrs Devoy provided her with a handwritten application form in the names of Mr Salarpour and Ms Ghorbani with their details including the false employment details as to place of employment on it. I accept Mrs Golian's evidence on this point, although Mrs Devoy denied doing so, but she accepted the handwriting on the form was "*very, very similar to my handwriting*". There was also another document sent from what was identifiably the fax header used by Mrs Devoy to Mrs Golian which, with reference to the applicants, noted they had a total income of \$130,000 which is quite false, and would have been known to Mrs Devoy to be false as it was a representation on behalf of her sister and brother-in-law. The note was mostly typewritten and signed by Mrs Devoy with a note in her handwriting as well. It was headed up "*client that I sent you a note about two nights ago*". Mrs Devoy denied typing the letter and, although accepting

the handwriting was hers, maintained that someone else had faxed it to Mrs Golian, but there is no evidence to support that contention, and the document originated from her. She was involved in the deception of the Bank from the very beginning of the transaction.

[352] Mrs Golian, once she had assembled the material, prepared a typewritten loan application in the form required by the BNZ which was signed by Mr Salarpour and by Mrs Devoy as his wife, Ella Ghorbani. Ms Ghorbani was not available at this point and Mrs Devoy held a Power of Attorney from her. Her evidence was she thought she had to sign the document when she had her Power of Attorney as if she was the donor herself but I have already, in relation to count 9, said why I do not accept that evidence as truthful and the same holds for this count. The signature, as with the signatures for Mrs Raisey signed by Mrs Devoy when she held a Power of Attorney for her, was a fair copy or facsimile of the donor's actual signature. Unfortunately the application was not dated although there was a printed date on the bottom of the form next to the application number. That date was 17 November 2009.

[353] Mrs Golian then dealt with Mr Simon Crang a mobile mortgage manager of the BNZ and recommended the loan be approved, which it was. Her evidence was she could recall meeting Mr Salarpour very briefly on 19 or 20 November 2009, before the draw down of the loan, at her office at Royal Oak. She was able to use her diary notes to support her evidence. Her recollection was that Mr Salarpour was very quiet with Mrs Devoy doing most of the talking. There was no evidence that the content of the loan application was discussed with Mr Salarpour. I accept his evidence, supported by his wife, that as at 2009 his English, while perhaps adequate for basic day to day conversations, was not particularly advanced. Mr Jabbari confirmed that when working for him Mr Salarpour would usually speak in Farsi and had difficulties with English.

[354] I accept the evidence of the Crown witnesses that the loan was signed before the draw down date, not after as Mr Salarpour contended. The probability of a loan of the size that was advanced being able to be drawn before a mortgage application was signed is so remote as to be specious. It was raised as an issue when Mr Salarpour wrote to the BNZ on 12 March 2010, once the Bank had discovered fraudulent documents had been used. That reply was concocted by Mrs Devoy and simply copied out by Mr Salarpour. It was written in fairly strident terms and asserted that Mr Salarpour met with Mr Crang after the

loan advance, and in December, to sign the application but I do not accept that. I accept that there may have been a meeting as there was evidence of a phone call from Mr Salarpour to Mr Crang on 7 December 2009. The fact that the phone call originated with Mr Salarpour hardly supports the proposition advanced that it was Mr Crang who was chasing Mr Salarpour to sign an application. I accept that contact with him after the draw down of the loan was most likely in relation to the method of loan repayment and nothing more.

[355] The issue, however, is whether Mr Salarpour was aware that false representations were made in the loan application at the time it was signed. The Crown accepted that there were no admissions made by him at interview that might constitute knowledge of the false representations at the time they were made. Their submission was that his role in the offending was much more limited but it was nevertheless an important part of the deliberate deception. The issue of deliberateness was at the heart of his defence, Mrs Scott submitting that there was no evidence he had read the typed loan application before signing it. His evidence supported Mrs Golian's account that the meeting with her was very brief. His English was poor and he trusted Mrs Devoy. His evidence was consistent with that given at interview. As to the date he actually signed the document I accept he may have been led to believe it was signed after draw down by Mrs Devoy through the letter she drafted for him to send to the BNZ. He attended solicitors, accompanied by Mrs Devoy, for the purpose of signing the mortgage documents but there was no evidence he was shown the loan application or that the content of the application was explained to him. He was simply acting as Mrs Devoy's preferred purchaser, albeit reluctantly. There is no evidence that the nature of the transaction was explained to him or even how complete the form was before he signed it.

[356] Consequently I am unable to conclude that the Crown has proved its case against Mr Salarpour to the required standard of beyond reasonable doubt in that he knew that he was part of a deliberate deception of the BNZ through the making of false representations contained in the loan application. Accordingly I find him not guilty of this count.

[357] The same cannot be said for Mrs Devoy. I accept Mrs Golian's evidence that the signed loan application was given to her by Mrs Devoy after the initial meeting on

12 November 2009. Mrs Devoy signed it in a way that represented she was Ms Ghorbani. Her evidence was that was how she believed an attorney signed under a Power of Attorney.

[358] Mrs Golian knew Mrs Devoy so it follows she would have known she was not Ella Ghorbani. The evidence was silent as to whether the document was signed in front of Mrs Golian or whether she was given an application that had already been signed. However Mrs Devoy admitted signing it as Ella Ghorbani. Mr Salarpour also admitted signing it. I am, for the reasons I have already given, satisfied it reached the mortgagee and was relied on by it before the mortgage monies were advanced.

[359] As Mrs Devoy admitted she signed the application she must have known the representations as to income and the source of income contained in the application were false. She must have known her sister did not work at the ADHB. She had supplied a false document in relation to count 11 under Giga's letterhead indicating Mr Salarpour was earning \$62,500 and yet, only a few weeks after that application to the Southern Cross was signed, she signed a mortgage application as if she was Ms Ghorbani which represented that her husband, Mr Salarpour was paid \$85,000 by Giga. She would have known the documents supplied to support the application were false as I am certain she created them. She dealt with the application from the beginning and throughout the process, and dealt with the solicitors in the same way she had on other applications. She was well aware the representations in the loan application were false and they were made by her with the intention of deceiving the BNZ. She knew the loan application would not have been approved unless the false representations as to income were made and so the representations were material. There is no issue of claim of right and accordingly I find the Crown has proved each and every element of this count against Mrs Devoy to the required standard and she is guilty of the same.

**Count 17 – Properties at 2/160 Mt Smart Road, Onehunga, and  
1/3185 Great North Road, New Lynn**

[360] This count is based on another false representation made in the loan application to the BNZ. The representation was that Ella Ghorbani had a term deposit of \$75,000 with the ANZ. The count is one of two brought under s 228(b) of the Act concerning dishonest use of documents, and is faced by Mrs Devoy only.

[361] The signed loan application provided by Mrs Devoy to Mrs Golian showed, for the applicant's financial position, a deposit of \$75,000 in a savings/term loan account. That loan application was given to Mrs Golian, as I have found, either as a signed document or signed in front of her after her initial meeting with Mrs Devoy at Royal Oak on 12 November 2009. The loan application was forwarded to Mr Crang at the BNZ together with supporting documents. One of those documents was an ANZ statement dated 16 October 2009 purporting to show that Ms Ghorbani had a current balance of \$75,000 in an ANZ term loan account which was due to mature on 31 October 2009. The document was a forgery. Mr Crang made a diary note on 17 November 2009 prior to the approval of the mortgage advance of \$620,000 two days later. The diary note states:

*“Term deposit \$75K ANZ has been invested for some months and come (sic) from accumulation savings.”*

[362] I am satisfied that, as with the loan application and documents supporting the application, the forged bank statement was provided to Mrs Golian by Mrs Devoy for the purpose of obtaining the loan. As it happens the deposit was not determinative of the loan application as Mr Crang's note to his superior at the BNZ on 9 December 2009, as part of the Bank's internal inquiry into the fraud perpetrated on it, stated that evidence of the term deposit statement was not necessary, as the monies said to be held in the deposit account were not needed for loan purposes, as the Bank was relying on equity in an existing property owned by Ella Ghorbani, Mr Salarpour's wife. Reliance, however, by the Bank is not a necessary component of liability under s 228(1)(b) of the Act as what must be shown is the use of the document, an intent to obtain a pecuniary advantage either for herself or any other person, dishonest use and no claim of right.

[363] Mrs Devoy's evidence in relation to this count was that she had no knowledge or involvement in the offending and she disagreed with Mrs Golian that she had provided the information in the loan application to the effect that Ella Ghorbani had a deposit of \$75,000. She claimed under cross examination that the information was faxed to Mrs Golian by a member of Mrs Azimi's family. She said that Mrs Azimi had told her that. Not only was that hearsay but it was never put to Mrs Azimi when she gave evidence.

[364] Mrs Devoy said she did not know how Mr Crang knew of the details of the deposit for his diary note and her explanation as to the presence of the false ANZ bank statement at



her home, where it was found by the SFO, was that it was provided by the BNZ after issues arose between the Bank and her brother-in-law and sister following a request to see the documents actually forwarded to it. I agree with the Crown's submission that the explanation lacks any credibility. It is simply a lame attempt to explain away the presence of the incriminating document which was one of various false documents used in other loan applications that were found in Mrs Devoy's home.

[365] Mr Duff's submission was that the presence of the ANZ statement could be explained by the fact that the SPA Penrose business records were transferred to her home for storage. There is, however, no evidence that Mr Salarpour and his wife were ever clients of SBA Penrose which provided accounting or bookkeeping services. Ms Ghorbani never had \$75,000 in an ANZ account in any event. Their income was small and they had no assets of their own so there is no reason to believe they would have required accounting services and in any event it was not the explanation given by Mrs Devoy in evidence.

[366] Overall I have little hesitation in finding that the Crown has proved beyond reasonable doubt that Mrs Devoy supplied the document and the loan application representing that her brother-in-law and sister had a deposit of \$75,000 to support the application to the BNZ for finance for the two properties. It was done in the belief that it would assist in that application so as to produce a pecuniary advantage for Mrs Devoy as her sister and brother-in-law were in effect her agents. I accept the evidence of Ms Millar that the transactions were constructed in a way to ensure that control was maintained over the property by Mrs Devoy and that the additional funds produced led to a surplus of \$127,326.73 paid on the transaction involving Great North Road, to Ella Ghorbani. Her bank account was used and controlled by Mrs Devoy and I accept Ms Ghorbani's evidence in that regard rather than Mrs Devoy's denials. The proceeds were paid to a number of persons including Nasrin Raisey and \$93,320 to Mrs Omidvar, Mrs Devoy's mother. Consequently the transactions were constructed in a way to obtain a pecuniary advantage for Mrs Devoy and/or others, two instances of which I have already given.

[367] Although the Bank may not have relied on the evidence of a deposit of \$75,000 I have no doubt that the transactions would not have proceeded had the Bank been aware of the fraudulent nature of the claims both as to income and as to the stated asset in the form of a term deposit. Mrs Devoy would have been aware of that. The false

representation was made dishonestly with the intention that the transactions proceed so that the pecuniary advantage I have already outlined be obtained.

[368] There is no issue of claim of right and there can be no issue that Mrs Devoy believed there was an express or implied consent for her act. Plainly the false representation was made dishonestly.

[369] Accordingly I am satisfied beyond reasonable doubt that the Crown has proved each and every element of this count against Mrs Devoy and she is guilty of the same.

### **Count 10 – 2/160 Mt Smart Road, Onehunga, Auckland**

[370] This count again arises in relation to a transaction involving 2/160 Mt Smart Road, and is faced by Mrs Devoy only. The count is one laid under s 240(1)(a) of the Act and the false representation is said to be a representation made by Mrs Devoy that Nasrin Kardani had paid a deposit of \$37,000 to the vendor Nasrin Raisey to purchase the property. The representation led to a credit of \$37,000 being given on settlement of the purchase of the property by Ms Kardani.

[371] The property was one of three acquired by Mrs Devoy using Nazrin Raisey as the purchaser by virtue of the power of attorney she held for her. Mrs Raisey knew nothing about the purchase or the subsequent sales. 160 Mt Smart Road was effectively three flats, numbered two, three and four. Mrs Devoy organised sales of each of the flats for settlement on the same day she had to effect the purchase in Mrs Raisey's name. The settlement date was 6 October 2009 and the balance of monies paid to purchase the properties in Mrs Raisey's name was \$641,594.34, a deposit of \$20,000 having been paid to Barfoot & Thompson who acted as the agents on the original transaction. That deposit was paid from monies drawn from Ella Ghorbani's account which was operated by Mrs Devoy with Ms Ghorbani's consent. In giving evidence Mrs Devoy denied that was so but I prefer Ms Ghorbani's evidence on the point not only for credibility reasons but also as the deposit was paid by Bank cheque issued from an ASB account registered in Ms Ghorbani's name but with the purchaser of the Bank cheque being Mrs Devoy. Her motor driver's licence was used as identification.

[372] The net proceeds of sale for the three separate transactions for the sale of the flats amounted to \$643,244.34 enabling the purchase to proceed and the solicitors to be paid. It is the transaction in connection with the sale of Flat 2 to Ms Kardani that the count concerns.

[373] The property was sold for \$310,000 by Mrs Raisey to Ms Kardani. A mortgage to Southern Cross was organised, Ms Kardani being the mortgagor and \$248,000 was received as the mortgage advance. A further \$26,140.14 was paid to the trust account of the solicitor acting for Ms Kardani and recorded as her personal contribution. As the evidence of Ms Margaret Miller, the SFO forensic accountant demonstrates that amount was paid to the solicitors trust account from an ASB account registered in the joint names of Nasrin Raisey and Eli Devoy. That still left a gap of approximately \$37,000 between the purchase price the Bank believed Ms Kardani was paying and the mortgage advance. Mrs Devoy overcame that problem in a familiar way, namely by deception. A cheque for \$37,000 drawn on Ms Kardani's Christchurch BNZ account and payable to Nasrin Raisey was drawn and purportedly signed by Ms Kardani on 10 November 2009.

[374] A photocopy of that cheque was then sent by facsimile to the vendor's solicitor, Ms Landon of the Property Law Centre accompanied by a note from Mrs Devoy advising that a "*deposit of \$37,000 had been arranged and accepted by Nasrin Raisey with full understanding*". Consequently a credit for \$37,000 was given on the vendor solicitor's settlement statement. The cheque was never presented and Ms Kardani confirmed at interview there were insufficient funds in the account to meet a cheque of that size. Ms Miller's expert opinion, which seems unanswerable, was that Mrs Devoy utilised the power of attorney she held for Mrs Raisey to purchase the property in Nasrin Raisey's name so as to ensure control was maintained over the property. Funds necessary to support the purchase from a *bona fide* vendor of the properties, Harrow Holdings Limited were able to be obtained through the notional sale to Ms Kardani by the utilisation of the device of representing a cash contribution had been paid, when a substantial part of it was not. Ms Kardani did not face a charge herself in this matter but was questioned at interview but not at trial in relation to the purchase or the cheque.

[375] Mrs Devoy said that it was Mrs Azimi who organised the transaction and the purchase by Ms Kardani was, effectively for Mrs Azimi and that other than completing and

signing the sale and purchase agreement, in her capacity as the attorney for Mrs Raisey she had no involvement in the transaction. She said that she was given the signed cheque for \$37,000 by Mrs Azimi and was told that payment had been arranged with Mrs Raisey.

[376] I do not accept Mrs Devoy's evidence. Other than being the real estate agent who was the vendor's agent on the sale from Harrow Holdings Limited to Mrs Raisey there was no other evidence of Mrs Azimi having any connection or interest in the property. It was Mrs Devoy who dealt with the solicitors. It was she who forwarded the documents to Mrs Golian to support the application for a mortgage to Southern Cross for the purchase by Ms Kardani of 2/160 Mt Smart Road. I accept that Mrs Devoy was introduced to Mrs Golian by Mrs Azimi whose real estate office was next to Mrs Golian's office but all the documents in connection with that transaction were given or sent to Mrs Golian for forwarding to the mortgagee in support of the application by Mrs Devoy, and they were the usual fraudulent bank statements purporting to support a payment of monies to Ms Kardani, which never happened. In this case it was said the monies would be provided by her father. A false ASB statement in Ms Kardani's name was submitted to Southern Cross by Mrs Golian, she having been given it by Mrs Devoy. Ms Kardani confirmed at interview she had never had an ASB account and the account number used in the false statement belonged to Merzdad Ghobani's wife Melica Nejad.

[377] Payslips in Ms Kardani's name were also false and were provided to Mrs Golian, as were BNZ bank statements. A representation was made in writing purportedly from Ms Kardani's father that he would provide with a gift of \$30,000 and would transfer the monies from his overseas savings. It was typewritten and sent by Mrs Devoy from her home facsimile number to Mrs Golian who forwarded it to the mortgagee, Southern Cross, on 29 September 2009. Also forwarded from Mrs Devoy's facsimile at the same time was a receipt from Persian Trading Limited purporting to show monies being changed for Ms Kardani's father's benefit in the sum of NZ\$34,850.75. The receipt was receipt number 1377, a blank copy of which was found by the SFO in a search of Mrs Devoy's home. Mr R Rad of Persian Trading Limited was able to confirm that the receipt was yet another false document. Mrs Devoy's explanation for the blank receipt was that it was simply part of the SBA records stored at her home but that cannot explain how it was that a completed receipt using that number was faxed from her home facsimile to Mrs Golian for use in Ms Kardani's mortgage application.

[378] The document sent to the solicitors to convince them that a deposit of \$37,000 had been paid was just another one of the false or fraudulent documents created by Mrs Devoy and used by her to support Ms Kardani's mortgage application. Her explanations simply do not bear scrutiny and I am satisfied beyond reasonable doubt that the Crown has proved each and every element of the count against her.

[379] Mrs Devoy's forwarding of the copy of the cheque to Ms Lunden, a solicitor or legal executive to Property Law Centre together with her note that the \$37,000 had been paid was plainly an attempt by her to deceive the solicitors by a false representation. Mrs Devoy knew no monies were paid by Ms Kardani to Mrs Raisey. Mrs Raisey was unaware of the transaction. Ms Kardani was simply Mrs Devoy's nominee and was introducing no funds of her own into the property which was acquired and held by the device outlined for Mrs Devoy's benefit. Accordingly I find Mrs Devoy guilty of this count.

#### **Count 16 – 2/160 Mt Smart Road, Auckland**

[380] This count, pursuant to s 240(1)(a) of the Act, is one in which Mrs Devoy and Mr Salarpour are jointly charged. The representation that is said to be false, and made by deception, was one that Hassan Salarpour had paid Nasrin Kardani \$46,500 by cheques in the name of ASHK Limited to complete the purchase of the property from her. Ms Kardani had acquired the property, as Mrs Devoy's agent or nominee, from Mrs Raisey, effectively Mrs Devoy herself, and through the transactions with which this count is associated the property was resold to Mr Salarpour and Ms Ella Ghorbani together with 1/3185 Great North Road. Both properties were remortgaged for the sales to be effected, the mortgage obtained being \$620,500, thereby enabling monies as previously discussed, effectively provided by the mortgagee, to be extracted from the properties.

[381] This count arises in the context of the sale of 2/160 Mt Smart Road from Mrs Devoy's 'dummy purchaser', Ms Kardani, to her sister and brother-in-law, Ms Ella Ghorbani and Mr Hassan Salarpour, under the agreement dated 12 November 2006. The count is one jointly faced by Mr Salarpour and Mrs Devoy and is one pursuant to s 240(1)(a) of the Act, namely obtaining property by deception, the deception being a false representation made to Ms Darsan Singh, a solicitor acting for the vendor, that a deposit of

\$46,500 had been paid Mr Hassan Salarpour in the form of two cheques, one for \$10,000 and the other for \$36,500 in the name of ASHK Limited, which monies were needed to complete the purchase of the property. A credit in that amount was given on settlement by Mrs Singh on behalf of the vendor. The monies were never paid as the cheques were not presented.

[382] ASHK Limited is a company of which Mr Salarpour is the director, and he and his wife are shareholders. He accepted he signed the cheques, at Mrs Devoy's request, and gave them to her. There was no evidence that he asked or was told what the cheques were required for but at his interview he said he did not know what Mrs Devoy was going to do with the cheques as he trusted her and she was "*like my sister*". He did tell her there was no money in his cheque account to support the cheques, and Mrs Devoy in her evidence agreed this was said to her. Mr Salarpour said that he was told by Mrs Devoy that if the cheques had to be presented funds would be banked to enable them to be met. He simply left matters at that point and did not know what the cheques were for but said, at interview, in relation to the cheque for \$10,000, that he assumed it was for the property purchase and it is logical to conclude that he also knew the larger cheque was to be used in that context as well.

[383] Mrs Devoy in giving her evidence said she told her brother-in-law that the cheques, if necessary, would be met from funds provided by Mrs Azimi but there was no suggestion in his interview that he knew Mrs Azimi was involved in any way in this transaction, and she was not, but for the purpose of determining Mr Salarpour's culpability the point is irrelevant. He understood that if it was necessary for the cheques to be honoured funds would be deposited to ensure they were.

[384] Both cheques were dated 12 November 2009 but on 26 November 2009 copies of them were sent by facsimile by Mrs Devoy to Mrs Singh. There was a covering note signed by Mrs Devoy, which was typewritten and which stated "*about Nazrin selling 2/160 Mt Smart Road, she received \$10K deposited on 12/11 and \$36,500 on 19/12 total deposited is \$46,500*". There were also handwritten notes on the facsimiles of the cheques confirming the receipt together with handwritten confirmation purportedly from Ms Kardani dated 18 November 2009, and 24 November 2009 with respect to the cheque for \$36,500.

[385] There is no evidence that Mr Salarpour saw the acknowledged receipts on the photocopies of the cheques forwarded to Mrs Singh or was aware of the representation contained in the typewritten facsimile note to the solicitor signed by Mrs Devoy. His evidence was to the effect that he asked no questions in respect of these transactions, his English was poor and he simply trusted his sister-in-law although he was aware that he and his wife were being used by Mrs Devoy to purchase properties. In relation to the Chorley Avenue property, which Mrs Azimi purchased in Mr Salarpour's name, he said that initially he was not even aware that she was the undisclosed principal and simply assumed it was his sister-in-law. That is recorded in his interview.

[386] The Crown submits that Mr Salarpour was an intelligent man who knew very well what the cheques were going to be used for when he signed them and gave them to his sister-in-law. I accept he must have known that the cheques were going to be, in all likelihood, used, if they had to be, for the purchase of the property but he had been assured that if they were going to be presented funds would be deposited into the account so the cheques would not be dishonoured. There is nothing in the evidence to show that he was aware of the false representations made by Mrs Devoy with respect to the cheques to Mrs Singh, the solicitor. Ms Kardani's evidence was that it was not her signature on the receipts underneath the copies of the cheques that were sent to Mrs Singh. I accept that evidence. There is no other logical conclusion other than that her signature was forged by or under the direction of Mrs Devoy.

[387] In any event, insofar as Mr Salarpour is concerned I am not satisfied that the Crown has proved beyond reasonable doubt that he was aware of the deception perpetrated on the solicitor or that the cheques would be used for that purpose. There was some evidence of a cultural context of the handing over of cheques in Iran, in that the giving of a cheque is not necessarily done with the intention it be paid, but sometimes is made as a form of security or sign of good faith, but it is not necessary to take that evidence into account in determining Mr Salarpour's culpability under this count as I am satisfied that he knew nothing of the detail of the scheme and was led to believe that if the cheques had to be presented monies would be paid into the account to enable them to be met, and further he had no knowledge of the false representation that was made to the solicitor. Accordingly I find Mr Salarpour not guilty of this count.

[388] Mrs Devoy's position is different. She used the cheques knowing there was no intention of presenting them and there were no funds available to support them. I do not accept her evidence about Mrs Azimi being prepared to make the monies available. That was simply part of the running theme adopted by the Ghorbanis at trial that Mrs Azimi lay at the root of all of the offending, which I do not accept. Mrs Devoy used the cheques for a further deception on the solicitors so as to lead them to believe the full amount of the purchase price would be able to be paid, partly from the mortgage advance from Southern Cross and with \$46,000 supposedly paid to Ms Kardani. She knew that was a false representation and her intention was to deceive the solicitors to obtain the credit of \$46,000 for the settlement, thereby enabling the transaction to proceed. She knew that without that deception the transaction would not proceed and so it was false in a material particular. There can be no issue of claim of right and accordingly I find the Crown has proved each and every allegation in relation to count 16 against Mrs Devoy and I find her guilty of this count.

#### **Count 22 – 30 Marina View Drive, West Harbour, Auckland**

[389] Mr Saeed Biparva was another Persian migrant to New Zealand from Iran. He worked as a motor mechanic, speaking only Farsi, and living in his brother's house at 30 Marina View Drive, West Harbour. With the agreement of his brother he wished to purchase the property for himself and his family. Mrs Devoy was by 2010 advertising her property services on television on a Farsi language programme for Persians living in New Zealand. Through this and through the local Persian community Mr Biparva came to know of Mrs Devoy and approached her for her assistance to obtain a mortgage to enable him to purchase his brother's property.

[390] A mortgage of \$386,958 was raised by Mr Biparva from New Zealand Home Loans. He was able to pay the balance needed to purchase the property for \$450,000. However, as a result of false representations contained in the loan documentation Mrs Devoy faced trial under count 22 in the indictment on a charge of obtaining credit by deception, the deception being a representation in the loan application lodged on behalf of Mr Biparva, which was false, that Mr Biparva worked for Landscape Auto Services earning an annual income of \$76,000.



[391] No issue was taken as to the falsity of the representation. Mrs Devoy's defence was that Mr Biparva dealt with her husband over the loan and it was not her who made the representations to the Bank.

[392] I have already discussed Mr Biparva's evidence in relation to count 1 when I referred to it in the context of propensity evidence. In late 2009 Mr Biparva met Mrs Devoy at her office at Small Business Accounting. He had agreed with his brother that he would pay \$450,000 for the house and had \$40,000 saved. He sought Mrs Devoy's advice. He was working as a mechanic for his brother, earning \$390 per week. His wife was in receipt of some form of benefit and his son was receiving a student loan. Mrs Devoy told him that his cash deposit of \$40,000 might not be enough to enable him to purchase the property but said that he would be able to obtain a loan from a Bank for the purchase, saying that he should open an account with a Bank and then have all his family's income, his own, his wife and son's, paid into the Bank to ensure it reached \$1,085 per week and do that for at least three months so that the Bank saw a regular pattern of payments. Consequently he gave all his and his families available money to his brother who then paid it into an ASB account which Mr Biparva had opened. Once he had established the necessary payment trail with the Bank he gave all his statements to Mrs Devoy for the purposes of the loan application. She then drafted an agreement for sale and purchase which he and his brother signed. He also provided Mrs Devoy with his driver's licence and passport. Mrs Devoy completed a mortgage application with New Zealand Home Loans for him.

[393] Mr Biparva's evidence was that Mrs Devoy asked him for a copy of a letter, in blank, for his brother's business with only the logo or name of the business, *Landscape Auto Services*, stamped on it. She told him she would complete the document for him and insert his salary. It was not until he was interviewed by the SFO that he saw the completed letter, some two years later, and there he saw that his salary was shown at \$76,000 per year which he confirmed, in his evidence, was considerably more than his actual salary. Further, the letter was signed, purportedly by his brother, Mr G R Biparva, but Mr Saeed Biparva said the signature on the letter was not that of his brother.

[394] Mrs Devoy also asked him for his user name and password for his online log-in with the Inland Revenue Department as she told him he would need to be registered with

the IRD. An Inland Revenue Department letter was subsequently generated showing his earnings and income details matching those set out in the forged letter from Landscape Auto Services given under his brother's forged signature. The Inland Revenue Department details showed his gross income as \$70,330.56 with PAYE of \$18,274.56 when his actual income was \$390 per week. This IRD statement was located on Mrs Devoy's computer by the SFO following from their search of her home.

[395] Mr Biparva's evidence was that the loan application to New Zealand Home Loans, to support the mortgage of \$386,958 which he subsequently obtained, was filled out for him by Mrs Devoy and in his presence. After she completed the loan application he signed and initialled it. The loan application was then forwarded to New Zealand Home Loans together with the supporting material in the form of the signed letter from Landscape Auto Services showing Mr Biparva as a full time employee of the business earning \$76,000, and ASB statements showing regular weekly payments of \$1,084.50 into Mr Biparva's account. Mr Biparva was adamant that he told Mrs Devoy the actual amount of his income and that of his wife and son.

[396] Mrs Devoy's evidence was to the effect that although she accepted she may have been the initial point of contact for Mr Biparva, she passed him to her husband to deal with in his capacity as mortgage broker. She denied meeting Mr Biparva at her office in Onehunga and telling him of the way in which the Bank could be misled over his actual earnings. She denied telling him to open a bank account and denied telling him that he had to deposit \$1,085 each week into the account for at least three months to be able to convince the Bank he had the income to support the loan that would be applied for. She recalled helping him with the loan application, at her husband's request, given she spoke Farsi and said Mr Biparva met her at her home. When asked how it was he could have got his evidence so wrong she commented that "*he's been trained by his accountant*", meaning that it was his accountant and a real estate agent who had told him how to go about getting a mortgage for which his income if properly disclosed would not have entitled him. She accepted that she was given the bank statements by Mr Biparva used to support his mortgage application.

[397] Two of the usual solicitors who regularly feature in transactions the subject of various other counts were also used, Mr Singh as solicitor for the vendor and Ms Sheryl Landon of the Property Law Centre as solicitor for the purchaser.

[398] Consequently there is a conflict in the evidence. Mrs Devoy maintains her role was simply assisting her husband. She denied forging the letter from Landscape Auto Services. She said Mr Biparva emailed the IRD statement to her. She accepted she collated the material Mr Biparva needed so that it could be sent to New Zealand Home Loans but she said the loan application was managed by her husband, not her. She said that she got nothing from the transaction. It was not a property she was interested in.

[399] There was no dispute that the representations contained in the home loan application as to income were false or that the mortgagee relied on the representations contained in the loan application to grant the mortgage to Mr Biparva.

[400] There are a number of patterns that have already been seen that are present for this offence. Firstly, there is the evidence of Mr Biparva's income being collected together with his family members to provide a level of income supposedly from him alone that might support the loan application. There is evidence that he was asked for a blank letter with the name of his brother's company on it which was then altered to support the false income details. The evidence of the construction of bank accounts, the arrangement with his brother to pay all the family's monies into that account to establish a pattern which would mislead the Bank and support the false letter of employment are all similar to what occurred when Mrs Devoy assisted her brothers in the purchase of their properties at 23 Glenmore Road, 10B Heretaunga Avenue, and 174 Main Road North, Christchurch. There is a clear pattern of conduct. Further, a document that was plainly altered, the Inland Revenue Department statement, was found on Mrs Devoy's computer, although I accept that was also a computer her husband may have had access to.

[401] Mr Saeed Biparva appeared to me to be an honest and reliable witness doing his best to give an accurate account of what actually happened. I accept there appears to have been little for Mrs Devoy in assisting Mr Biparva with the transaction. She was not paid. The property was not one she was interested in acquiring or controlling for her or her family's sake. However, it seems clear from Mr Biparva's evidence that Mrs Devoy was

actively advertising her services within the local Persian community, no doubt seeking to expand her range of contacts and connections. Evidence was given by a number of persons of the considerable assistance given to them by Mrs Devoy after they arrived in New Zealand, with them subsequently being asked by her to help with the purchase of properties and feeling under an obligation to do so because of what had been done for them. Consequently not much weight needs to be given to the absence of any evidence of direct payments to Mrs Devoy for her assistance to Mr Biparva. That was not how she operated. She worked in a more traditional way of asking favours from those for whom she had given favours in the past and her willingness to assist Mr Biparva, it seems to me, is no more than that.

[402] Overall, therefore, I am satisfied to the required standard that the Crown has proved each and every element of the count against Mrs Devoy. She knew, as a result of her discussions with Mr Biparva, that the representation as to income was false and that it was intended to deceive the BNZ, and subsequently did so. She knew that would be a material particular in the outcome of the loan application. Accordingly, inserting the false amount of income in the loan application, which I am satisfied she did, and providing false documents in the form of the typewritten statement of income from Landscape Auto Services and the Inland Revenue Department, which I am satisfied were authored by her or under her direction, leads me to find Mrs Devoy guilty of this count as I am satisfied she forwarded the application with the false statements and false supporting documents to the mortgagee to be able to obtain the loan for Mr Biparva.

#### **Count 8 – 5 Ingleby Place, Kelston, Waitakere**

[403] This count concerns the purchase of 5 Ingleby Place, Kelston, Waitakere, by Mrs Devoy's sister, Ella Ghorbani, effectively acting as agent for Mrs Devoy who was the undisclosed principal. Charges were laid under s 257(1)(b) of the Act, namely using documents, knowing them to be forged, as if they were genuine. The documents concerned are payslips in the name of a hairdressing salon called Two 4 One, a business owned at one time by Mrs Azimi. Ms Ghorbani was represented on the loan application as working for the business, which she did not, and the payslips were supplied to support the false representation.

[404] The loan application was successful and the ASB advanced a mortgage of \$225,600 to enable the property to be purchased.

[405] The agreement to purchase in the name of Ms Ghorbani was signed on 23 March 2009 and was for \$282,000. It was negotiated through Barfoot & Thompson. Ms Ghorbani was aware of the agreement and went with her sister, Mrs Devoy to the ASB to open a bank account. That account was always operated by Mrs Devoy, and not by Ms Ghorbani. The property itself was subsequently sold for \$390,000, settlement being effected on 7 August 2009, five weeks after the settlement date on the first agreement. On 26 June 2009 Ms Ghorbani signed a Power of Attorney appointing Mrs Devoy as her attorney as Ms Ghorbani intended to return to Iran for approximately a month.

[406] The purchase was effected on 1 July 2009 with the use of the mortgage advance from ASB which itself was repaid when the property was sold only five weeks later. Mrs Devoy had paid \$50,000 to Ms Ghorbani's bank account on 25 June 2009 and withdrew \$47,700 on the same date which was paid into Mr Andrew Seton's trust account on the following day, thereby enabling the transaction to proceed. He acted as solicitor for Ms Ghorbani on the transaction. A deposit of \$10,000 was paid directly to the vendor, the cheque being drawn by Mrs Azimi. The net result of the two transactions was that surplus funds of \$80,398 were generated which were paid by Mr Seton into Ms Ghorbani's account following settlement of the sale of the property in August 2009. That account was under the control of Mrs Devoy.

[407] There was no issue that the payslips used to support the loan application were forged, and the information in the application as to Ms Ghorbani's alleged earnings from the hairdressing salon was also false. There was no issue that the documents were supplied to the ASB to support the loan application and had the Bank known that the payslips were not genuine the loan would have been declined, and that whoever used the documents as if they were genuine knowing them to be forged did so with the intention of deceiving the Bank. The issue, as far as Mrs Devoy was concerned, was that it was not her who forwarded the application or created or used the payslips as if they were genuine, although she did accept that her handwriting appeared on the payslips. Mrs Devoy's evidence was that it was Mrs Azimi who had suggested to her that she use a Power of Attorney for her sister as it was intended the purchase would be a joint acquisition by Mrs Azimi and

Mrs Devoy, and the use of the Power of Attorney would mean that Ms Ghorbani need not be bothered with the detail of the transaction. Her evidence was that it was Mrs Azimi who completed the agreement for sale and purchase. She said it was not her who sent the payslips to the mortgage broker involved, Ms Dunn of Adam Parore Mortgages, for forwarding to the Bank. Consequently it was not her who used the forged documents as if they were genuine.

[408] Ms Dunn's evidence was that she first spoke to Mrs Devoy after she became aware that she was a franchise holder at SBA Penrose. She was told to refer business to her and rang her in 2008 as a general introduction. In that conversation Mrs Devoy indicated she had a number of clients she would refer to Ms Dunn. She told her that her husband, Warren Devoy, was a mortgage broker but she did not refer business to him as it caused difficulties within their marriage. Ms Dunn said she was rung by Mrs Devoy and asked to act as a broker for Ella Ghorbani on the purchase of 5 Ingleby Place, Kelston. She never met Mrs Devoy but had a number of dealings with her from June 2009 onwards, being the date of the Ingleby Place application, including having Nasrin Raisey referred to her by Mrs Devoy over the purchase of 10B Heretaunga Avenue in July 2009, a further purchase by Ella Ghorbani of 1/3185 Great North Road in August 2009, and towards the end of 2009 a purchase of 10B Heretaunga Avenue by Nasrin Kardani and Mehrdad Ghorbani, he using his former names as one of the purchasers. All the documents including the signed loan application with false representations as to income and place of employment and the false payslips were sent to Ms Dunn by facsimile from the W & E Devoy facsimile header on 22 June 2009 at approximately 11.00 pm.

[409] Mrs Devoy said the transaction was one in which Mrs Azimi had an interest and so she passed the information on her for forwarding to Ms Dunn. She accepted it was possible she might have forwarded the information but would not accept that it could be concluded she did because there was no covering letter from her indicating that. However, it is unlikely Mrs Azimi came into her home at 11.00 pm at night and sent the facsimile to Ms Dunn. Ms Dunn knew that Mrs Devoy worked with an agent of Barfoot & Thompson who located properties, often at risk of mortgagee sale, but said that at all times the person she spoke to was the person who had introduced herself by telephone as Mrs Devoy. Consequently I am satisfied the documents were sent by Mrs Devoy.

[410] Mrs Azimi was cross-examined on the issue and denied dealing with Ms Dunn or representing in telephone conversations with her she was Mrs Devoy. However, even though I accept that this may be a property in which Mrs Azimi did have an interest given she located it, prepared the agreement for sale and purchase and paid the deposit, the nature of her business relationship with Mrs Devoy was that Mrs Devoy would deal with the brokers and with the application and associated documentation. Ella Ghorbani was Mrs Devoy's sister, not Mrs Azimi's, the facsimile machine from where the information was sent was the facsimile machine at Mrs Devoy's home and the material was sent late at night. Mrs Devoy's handwriting was on the payslips which accompanied the application, and so I am satisfied that it was her who dealt with Ms Dunn and forwarded the signed loan application with false details as to income contained in it and the false payslips to support the claimed income.

[411] Mrs Azimi said in giving evidence that she did not issue payslips for persons working at her business. Mrs Devoy knew her sister did not work as a hairdresser at the salon which was located next to SBA's premises. She therefore knew that the details contained in the loan application and on the payslips were false and that the payslips were forged, but sent them nevertheless as it was her intention that they be used as if they were genuine as part of the deception of the Bank. Her intention was to mislead the Bank as had Ms Ghorbani's true level of income been known to the Bank the loan would not have been approved.

[412] Mrs Devoy said when giving evidence that the reason her handwriting appeared on the payslip was that it belonged to a person with the Christian name 'Olga', whom she had been assisting with immigration matters. She said 'Olga' was the manager of the salon, Mrs Azimi's hairdressing business, and Mrs Azimi gave her the payslips to send to Immigration. She claimed someone had altered the top of the payslip. Two 4 One Hair and Beauty payslips in the name of Mrs Devoy's sister-in-law, Melica Ghorbani, were found by the SFO in the search of her home.

[413] I do not accept Mrs Devoy's evidence, firstly, because having found that Mrs Devoy forwarded the payslips and the signed loan application to Ms Dunn on her sister's behalf, she would have been clearly aware of the false nature of the representations contained in the application and that the payslips were forged. Secondly, her explanation

about dealing with 'Olga' appeared to me to be contrived as a way of explaining how it was her handwriting appeared on the false payslips. Given the generally unsatisfactory nature of her evidence I am satisfied her evidence on that point is not to be believed. Overall, therefore, I am satisfied that the Crown has proved each and every allegation to the required standard of proof and she is accordingly convicted of count 8 of the indictment.

**Count 14 – 1/37 Richard Farrell Avenue, Remuera, Auckland**

[414] This count relates to the purchase of 1/37 Richard Farrell Avenue, and concerns the false statements contained in the loan application to Southern Cross in which it was represented that Melica Nejad, Mrs Devoy's sister-in-law, worked for ADHB earning \$45,000 and Mr Mehrdad Ghorbani, shown in the application as Mohammad Ghorbani Sarsangi, and his wife had Bank funds totalling \$185,000. The charge is brought under s 240(1)(b) of the Act. Mrs Devoy pleaded guilty to the count prior to trial and so a verdict is only required in respect of Mehrdad Ghorbani, who was jointly charged with Mrs Devoy.

[415] Mr Ghorbani's defence was that he had no interest in the transaction, the purchase in reality being effected for Mrs Azimi, as he and his wife were simply acting as purchasers as a favour to her for assisting them with the Glenmore Road transaction which involved the purchase by Ms Nasserri and which enabled the property to be effectively retained for him and for his family. He said he did not sign the application to Southern Cross dated 22 October 2009, and was not involved in the creation of the supporting documents, which he accepted were incorrect as to income, employment and the funds of \$185,000 said to be held in a bank account.

[416] At interview Mr Ghorbani said Mrs Azimi approached him and told him the property was for sale and it would be a good investment for him. He said the purchase price was \$510,000 and he and his wife were able to borrow by way of mortgage the sum of \$408,000 from Southern Cross. He said the difference was made up by a loan from Homei Azimi for three months and his own cash of \$25,000. He said he "*took care*" of the balance himself. Subsequently the property was sold to another Persian, Mr Karim Besharati on 12 November 2010 for \$650,000. This was approximately a year after the



purchase by Mr Ghorbani and his wife. In his interview he said the property was sold for \$550,000, although the purchase price on the agreement for sale and purchase was \$650,000. At trial he said he knew nothing about the transaction involving the sale of the property and only learned of it when Mrs Azimi asked him to go to the solicitor to sign the necessary documents. According to Mrs Miller, the SFO forensic accountant, the monies paid on settlement on the sale was reduced by way of a deposit of \$95,000 said to have been paid privately to the vendor, Mr Ghorbani and his wife, overseas, but those monies have never been traced. Mr Ghorbani's statement that it was sold for \$550,000 would tend to suggest a deposit was never actually paid. In any event the sale transaction is not the subject of any charge.

[417] Mrs Miller's evidence was that \$93,000 used in the transaction to purchase 1/37 Richard Farrell Avenue was part of the surplus of funds that arose on the sale of 23 Glenmore Road on 17 November 2009, when Roya Nasserri resold the property to Mr Ghorbani and his wife, both using their original names. That proposition was put to him at interview after he said the transaction had been funded by a short term loan of \$75,000 from Mrs Azimi. He then said the funds were part of a surplus of \$100,000 that arose on the Glenmore Road transaction, \$75,000 of which was Mrs Azimi's, and he effectively re-borrowed that money from her. The Glenmore Road transaction did produce a surplus of funds as the property was sold by Ms Nasserri to Mr Ghorbani and his wife for \$628,000, having been purchased by her a month previously for \$448,000. The sum of \$498,000 was borrowed from ASB by Mr Ghorbani and his wife and is the subject of counts 12 and 13 in the indictment.

[418] The surplus that arose on the last Glenmore Road transaction went largely to two further transactions, one being the purchase by Mr Ghorbani and his wife of 1/37 Richard Farrell Avenue, the subject of this charge, for which \$93,312.58 was advanced, and the other being towards the purchase of 2/636 Mt Wellington Highway, for which the sum of \$32,000 was advanced.

[419] Mrs Devoy dealt with the Property Law Centre, solicitors acting for Mr Ghorbani and his wife, and on 18 November 2009 received a facsimile from Ms Sheryl Lunden asking for a Bank cheque of \$93,312.58 being the balance of the purchaser's contribution. Those monies were drawn from a bank account in the name of Roya Nasserri to whom the

net proceeds of sale of 23 Glenmore Road had been part paid by her solicitor, Mr Singh, when the property was re-purchased by Mr Ghorbani and his wife in the way previously described. A Bank cheque was drawn and paid into the Property Law Centre's trust account for the purpose of settlement of the purchase of 1/37 Richard Farrell Avenue. The other amount of money contributed was the sum of \$10,000 as a deposit which was paid to the vendor's solicitor. That deposit was paid by Bank cheque on 12 October 2009 issued from an ASB account registered in the joint names of Eli Devoy and Nasrin Raisey. Mrs Devoy's motor driver's licence was used for identification by the purchaser of the cheque.

[420] Consequently this was how the transaction was funded. The agreement for sale and purchase by which Mr Ghorbani and his wife acquired the property was originally in the name of Hassan Salarpour as purchaser but on the date for settlement, 18 November 2009, a Deed of Nomination substituting Mr Ghorbani and his wife, both using their original names, as purchasers was signed.

[421] The loan application form itself was, I am satisfied, completed by Mrs Devoy. Mr Ghorbani accepted, in his evidence, that the handwriting on the loan application appeared to be hers. She forwarded the application by facsimile to Ms Welch at Southern Cross, together with the requisite supporting documents which evidence the claims as to income, source of income and the false ANZ term deposit of \$185,000. Mrs Devoy continued to fax further supporting documents to Southern Cross in early December. Mrs Welch's evidence was she met Mr Ghorbani and his wife at her office, and Mrs Devoy accompanied them to the meeting. The meeting lasted approximately fifteen minutes. On 12 November 2009, following the meeting she emailed Ms Lindsay of Southern Cross stating that she had contacted their employers to confirm employment and income. Ms Devoy appeared to have provided the corroborating correspondence at least for Mr Ghorbani's wife, after the ADHB refused to confirm her employment when Ms Welch made a telephone enquiry.

[422] Both Mr Ghorbani and Mrs Devoy blamed Mrs Azimi for this transaction. Mrs Devoy did not accept responsibility for the false payslips that accompanied the transaction but I do not accept either Mr Ghorbani or Mrs Devoy's evidence on the matter. Mr Ghorbani explained his interview statements at trial by saying that he wanted to protect

Mrs Azimi, as he had agreed to do, because of the pending Real Estate Agents Disciplinary Tribunal matter. At interview he said he accepted Mrs Azimi had introduced him to the house but also said that he had asked Mrs Devoy, and the mythical 'Raj' to get him a loan for \$408,000. At trial he said he had not seen the loan application and did not provide any documents but agreed the documents were false.

[423] I accept Mrs Azimi may have identified the property as one suitable for purchase by Mr Ghorbani. That seemed to be how the arrangement worked with Mrs Devoy. Mrs Devoy would handle the mortgage applications and supporting documents required. I do not accept Mr Ghorbani's evidence that he was unaware of the false representations made on his behalf in the loan application or in the supporting documents. Neither do I accept his evidence that he was acquiring the property with his wife as a favour for Mrs Azimi and simply acting as her agent.

[424] I am quite satisfied that the proceeds of the Glenmore Road transaction were regarded by the Ghorbani family as belonging to Mr Ghorbani and he intended to use them to acquire another property, once he had re-secured his home by the series of transactions already discussed. He wanted that property as an investment property as he said at interview. Mrs Devoy assisted him. The relationship between the two meant that Mr Ghorbani was at the heart of this transaction with his sister acting to assist him in the purchase of an investment property. This was clearly part of the planned scheme for the Ghorbani family, Mehrdad Ghorbani in particular in relation to this count, to acquire properties without any effective equity of their own. It was Mrs Devoy who handled the necessary applications or liaised with mortgage brokers, but Mr Mehrdad Ghorbani was fully aware of what was occurring. He tried to attribute everything to Mrs Azimi and present himself as someone who was duped and was merely doing a favour for a friend.

[425] At interview Mr Ghorbani was clear that the property was acquired by him as an investment property. In discussing the subsequent sale he said his share of the surplus was \$13,000. He also was clear that a loan of \$408,000 from Southern Cross was raised. Consequently his evidence that he knew nothing about it is false. At interview he said, with respect to the funding of the transaction "*anyway so we applied for another loan and got the loan about \$408,000*", a clear acknowledgement that he and his wife were the applicants.

[426] Secondly, with regard to the use of his original names, he said that 'Raj' had told him to use his old name as the Banks were inter-connected and might discover the defaults on the Glenmore Road property. At trial he admitted his lie in relation to 'Raj', accepting that he never met him, and did not know who he was, but said the story was made to protect Mrs Azimi who had suggested to him that they use their original names as she was concerned over the issue of their credit history. He said he disputed that with Mrs Azimi and said it would make no difference anyway as the Bank could connect their old names to their new names. I doubt that he knew that at the time but it would have been apparent to him from the documents obtained in criminal discovery in the course of trial that the banks did know of his and his wife's old name, it appearing on a bank document. That argument seemed to me to be fashioned around the existence of the document which came into his possession after the proceedings commenced.

[427] In any event, I do not accept his story about the property being for Mrs Azimi. He may have been concerned over the possibility of he and his wife being refused a loan because of their previous credit history and decided on the ruse of using their old names. He may have been told to do that by others, and I cannot exclude the possibility that Mrs Azimi, who may have found the property for him, suggested it to him. However, I am quite satisfied the property was an investment property for him, and for his wife, and he knew a loan application would be made to Southern Cross which his sister would deal with. He would also have been very well aware of his own and his wife's parlous financial situation. They had been unable to meet their mortgage over the Glenmore Road property because of the loss of the business in Iran and the monies that generated. His wife was working as a shop assistant. His own earnings, he knew, were of a level insufficient to support a mortgage loan of \$408,000. The only possibility of obtaining the loan would be to use the well-trying method of falsifying income and employment details and submitting them to the mortgagee.

[428] Mr Ghorbani's defence was that he did not make the representations. The evidence that he signed the loan application has not reached the point where, in the face of his denial, I can be satisfied that the signature on the form is his. It was sent from Mrs Devoy's home to Mrs Welch on 29 October 2009 at 23.47 pm. Although handwriting evidence was not available, his signature on the application does appear different to that on documents signed for third parties, such as the acceptance of the loan offer, where most of

the letters in his surname are clearly identifiable, in contrast to those on the loan application. However he and his wife signed a document addressed to Southern Cross at the time the mortgages were signed at their solicitor's office, which document confirmed that their financial position as detailed in the loan application form had not changed including income, place of employment, or liabilities or encumbrances. That document was signed on 18 November 2006. There was no suggestion of any demur or questioning by him or his wife of the content of the application. Mrs Welch confirmed that was required by Southern Cross and correspondence referred to at trial indicated that was a requirement of First Mortgage Services with whom Southern Cross had sought insurance cover to ensure repayment of the loan.

[429] Further Mrs Devoy, in her facsimile of 29 October 2009 to Ms Welch, forwarded a typewritten covering note which she signed and which indicated that their joint income was over \$130,000 and that a Savings Certificate with the ANZ, which was false, was attached. Consequently I believe Mr Ghorbani was well aware of the false representations that were being made on his behalf to ensure that the application proceeded, and was also aware that the loan would not have been granted by Southern Cross but for the false representations supported by the false documents provided by his sister. The deception was the reason for obtaining credit, as had Southern Cross known the true situation the mortgage advance would never have been approved. I reject Mr Ghorbani's defence that he had no intention to deceive. I do not accept his evidence that "*everything was again Mrs Azimi*".

[430] In his closing address he said that he was not challenged on his assertion that he did not sign the loan application. He also said that he had no knowledge of the loan application for 23 Glenmore Road which enabled he and his wife, using their original names, to re-purchase the property from Ms Nasser, but I do not accept this. He said "*this came out of the blue*" but as noted at para [163] herein, in relation to count 12, he accepted that he and his wife signed that application notwithstanding, on his evidence, not knowing anything about it. I do not believe this.

[431] The application in relation to count 12 had the same misleading statements as the application for this count as to his wife's income and the deposit of \$185,000 with the ANZ. For count 12, he accepted, as here, that the details were false but said he and his

wife signed the application without knowing what was in it as he alleged it was presented to him as a blank document. For count 14 he again accepted the details were false but denied signing the application. The application as with that relating to count 12 was plainly for his benefit and he was assisted by his sister in deceiving Southern Cross as he and his sister had earlier deceived Banks.

[432] Overall, therefore, with the acknowledgement at interview that an application was made to Southern Cross for \$408,000, with my being satisfied the property was an investment property for him and not merely he and his wife acting as disinterested purchasers for Mrs Azimi, with his attendance on Mrs Welch, clearly for the purposes of the mortgage application, when in his solicitor's office, and without any evidence of dispute over the content of the application, and with the knowledge I am satisfied that he had as to his and his wife's own inadequate resources to support a loan of this size, as well as the fact that he had worked in concert with his sister previously to mislead Banks over income and source of employment details, the only inference that can be drawn is that he knew of and supported the false representations made in the loan application knowing the same were necessary to be able to obtain the mortgage advance. The methodology involved in drawing an inference is referred to in the classic statement by Lord Wright in *Caswell v Powell Duffryn Associated Collieries Limited* [1940] AC 152(HL) at 169-170 where it was said:

Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. In some cases the other facts can be inferred with as much practical certainty as if they had been actually observed. In other cases the inference does not go beyond reasonable probability. But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture.

[433] The degree of certainty I have with this count is not simply conjecture or speculation. It is reinforced also by the content of the email correspondence Mr Ghorbani's wife had with ADHB in relation to false statements of her income used to support another loan, and to which I have already referred at para [163], in which she wrote to say that her husband told her to make the false statements of employment and income from that source. When that was put to him in cross-examination Mr Ghorbani accepted that she had said that, but his evidence was that she meant to attribute it to Mrs Azimi and was simply covering for her. I rejected that proposition but, again, it

illustrates how Mr Ghorbani was willing to be part of these frauds on mortgagees. I am therefore satisfied that the Crown has proved all of the elements of this count against Mr Ghorbani to the required standard of proof and he is guilty of the same.

### **Counts in relation to 62A Ashby Avenue, Glendowie, Auckland**

[434] There are three counts which concern this property. The first, count 21, is faced solely by Mrs Devoy and is laid pursuant to s 240(1)(b) of the Act, the amount said to have been obtained by deception being a loan of \$250,250 from New Zealand Home Loans with the false representations contained in the loan application in the name of Fatemeh Saei, being that she had \$1,350,100,000 Rials in an account with the Maskan Bank, a Bank in Iran, and that she had transferred the money to New Zealand and changed it into New Zealand dollars.

[435] The other two counts, counts 23 and 24, are counts in which Mrs Devoy was jointly charged with Javad Toraby and concern charges of obtaining by deception with representations said to be false in a loan application, being that Mr Toraby held funds worth \$112,000 with the Parsian Bank and, in relation to count 24, that Mr Toraby had paid \$105,000 to Ms Saei to purchase the property.

### **Count 21 – Saei loan application**

[436] Fatemeh Saei was a Persian living in Auckland who met Mrs Devoy in 2005 through the local Iranian community. Some time later she began to discuss with Mrs Devoy, whom she believed to be a mortgage broker, issues concerning the sale and acquisition of property. She also came to meet Homei Azimi, and through discussions with both of them was told that a property at 62A Ashby Avenue, Glendowie, Auckland was available for purchase as it was about to go to a mortgagee sale, and she was asked if she would help the owner and his wife, fellow Persians, by buying it. Consequently an agreement for sale and purchase was prepared by Barfoot & Thompson for \$418,000, the vendor's being Kourosh Mehraban and Mitra Tabousi, and with Ms Saei as the purchaser. The transaction was settled on 12 March 2010 with a mortgage advance of \$250,250 provided by New Zealand Home Loans. A broker with New Zealand Home Loans,

Mr P Pardo, acted for Ms Saei on the recommendation of Mrs Devoy. Mrs Devoy provided Mr Pardo with the documents needed to support the mortgage application.

[437] Mr Pardo had been referred other clients by Mrs Devoy. He acted again for Ms Saei on the purchase of 3/78 Paihia Road, One Tree Hill from Mr Ferrari, the subject of count 25 which has been discussed earlier, and he acted as a mortgage broker for Ms Kardani, on the recommendation of Mrs Devoy and again with her assistance, on the purchase of 29 Chorley Avenue, Massey, the subject of count 19.

[438] A deposit of \$10,000 was paid as the solicitors acting for Ms Saei, the Home Transfer Centre, advised prior to settlement that the amount required to settle was \$159,225.24 after receipt of the mortgage advance of \$250,000 from the Bank. A cheque for that amount was paid to the solicitors by Bank cheque. The Bank cheque was issued from an ANZ account registered in the name of Warren Paul Devoy. Consequently, although Ms Saei's evidence was that the transaction was represented to her as one in which she was assisting a fellow Persian, 'Kourosh', to retain his home, the forensic accountant for the SFO, Ms Miller, opined that she was simply being used to gain control over the property for Mrs Devoy.

[439] A loan application was organised through Mr Pardo and documents were supplied to support the application. Two of them are referred to in the particulars provided in support of the count, namely that Mrs Devoy provided a document purporting that Ms Saei had money (1,350,100,000 Rials) held in an account with the Maskan Bank and, secondly, that she had transferred that money to New Zealand and changed it into New Zealand dollars.

[440] Ms Saei, in her evidence, confirmed that she did not hold a bank account with the Maskan Bank in Iran, and had no bank accounts other than in New Zealand.

[441] A document, supposedly a translation of one received from the Maskan Bank in Iran, was provided to Mr Pardo for the purpose of the loan. It purported to certify that Fatemeh Saei was the holder of a numbered bank account opened on 18 February 2006, and "*has some 1,350,100,000.00 Rials in her savings account*". The document is purported to have been signed and sealed by "*Nonahalin Branch Manager*". Two seals were placed on the document, one at the top left of the page and the other at the bottom



right. At Mrs Devoy's home a page of paper, largely blank but with the same seals affixed in identical places was found and was referred to in evidence by Mr B R Fox, an investigator at the SFO at the time of the search of Mrs Devoy's property.

[442] A receipt was also sent by Mrs Devoy to Mr Pardo from Persian Trading Limited ("Persian Trading") which represented that Ms Saei had changed the Iranian money referred to in the preceding paragraph into New Zealand dollars. The receipt was for \$18,464 for the exchange of \$1,350,100,000 Rials. The receipt was dated 1 March 2010. Ms Saei, in her evidence, said she knew nothing of the monies and Mr Rad, the owner of Persian Trading, could not locate a copy or record of the receipt as having been issued by his company. The receipt number was obscured but the facsimile header indicated it was sent on 1 March 2001 from the facsimile at Mrs Devoy's home. Mr Pardo's evidence was that he received these documents by facsimile from Mrs Devoy, as well as other supporting documentation. These documents were subsequently forwarded by Mr Pardo to Kiwibank and the loan application was approved by New Zealand Home Loans.

[443] Mrs Devoy said she had nothing to do with the property, and never met Ms Saei, but she did accept she may have sent some documents on behalf of Mrs Azimi. Her evidence was that Mrs Azimi introduced Ms Saei to the vendor. She accepted she had a role in the mortgage application but it was simply passing documents through to Mr Pardo that Mrs Azimi collected from Ms Saei. She said she had nothing to do with the property other than perhaps assisting Mrs Azimi with the sending of documents to lawyers "*or anything like that*". She disagreed with the evidence of Ms Saei that she had accompanied Ms Saei to solicitors in Dominion Road, the offices of Shean Singh, to sign papers. She accepted she may have faxed the Persian Trading receipt to Mrs Singh. She accepted the translated document purportedly from the Maskan Bank, the receipt and the seals, positioned as they were on the document purportedly from the Maskan Bank, were found on a separate piece of paper which was largely blank but with handwriting "*Elena*" in the top left corner, and that these documents were found in her home. She said Elena was an Iranian translator who was a former client of SBA Mt Roskill, and then SBA Penrose, and was the first client Mrs Azimi had in Auckland. She said the document must have been among the documents shifted to her property from SBA Penrose and she denied any knowledge or involvement in the creation of the document from the Maskan Bank.

[444] I do not accept Mrs Devoy's evidence. Firstly, I am satisfied Ms Saei had nothing to do with the creation of the false Iranian Bank document on the receipt. Both documents, the translation of the letter purportedly from the Maskan Bank and the receipt were forwarded to Mr Pardo from Mrs Devoy's facsimile on 1 March 2010. The fax header sheet shows they were sent as part of the same transmission at 23:08 pm from Mrs Devoy's home facsimile machine. The timing of the transmission makes Mrs Devoy the obvious candidate for the person sending the document from her home to Mr Pardo. The following day he sent the documents to the Credit Manager of Prime Lending at New Zealand Home Loans to support the application for Ms Saei's mortgage. The loan was approved and the loan offer sent to Ms Saei on 3 March 2010. The receipt and the translated letter were found at Mrs Devoy's home. Further, her evidence that she had nothing to do with the loan is in direct contradiction of the evidence of Ms Saei, who said she dealt with Mrs Devoy at all times, and whose evidence I prefer as she appeared to me to be a more reliable witness and, secondly, because a large sum of money sourced to Mrs Devoy's husband was used as part of the cash contribution for the purchase.

[445] I do not discount Mrs Azimi having an interest in the property. The Bank cheque for the deposit of \$10,000 was purchased by her. Ms Saei said her discussions with reference to the purchase were with both Mrs Azimi and Mrs Devoy. However the source of the false documents was, I am satisfied, Mrs Devoy and again this is consistent with the role she played in that Mrs Azimi would find property and deal with real estate matters, and Mrs Devoy would deal with the mortgage applications and the documents necessary to support the same. Ms Saei said she knew nothing of the Persian Trading receipt and was unaware that it was initially contemplated that there would be a joint application in her and Melica Ghorbani's names, as an application signed by Mrs Ghorbani was among Mr Pardo's files. She also said the rental for the property was paid to Mrs Devoy, and she did so because Ms Saei did not regard the property as hers. All of this points to her role as being no more than a 'dummy purchaser' acquiring and holding the property until it was ready to be re-sold and re-mortgaged.

[446] The documents were plainly false and were constructed to support the application in Ms Saei's name and to be able to obtain a loan from New Zealand Home Loans. Had the Bank known the documents were false the application would have been declined, a fact that was undoubtedly known to Mrs Devoy. She sent instructions to Mr Pardo through

facsimiles, together with the supporting materials. She answered his queries as Ms Saei was barely able to speak English. The idea that Mrs Devoy had nothing to do with the transaction is simply not plausible. I am satisfied that she prepared and supplied the documents with the intention of deceiving the Bank. She knew they were false representations and would be relied on by the Bank. There can be no issue of claim of right. She knew the documents to be false, and false as to a material particular, and accordingly I find the Crown has proved each and every element of this count against Mrs Devoy and find her guilty of the same.

### **Count 23 – Toraby loan application**

[447] Within a short period of purchasing the property Ms Saei decided that she no longer wished to remain as the nominal owner and asked Mrs Azimi to sell it. It was sold to Mrs Devoy and Mrs Azimi's friend, Javad Toraby, another accused in the trial. Two counts arise as a result of that transaction, both relating to false representations allegedly made by Mrs Devoy and Mr Toraby. The first of the two counts, count 23, concerns a count of obtaining credit by deception, namely a loan of \$720,000 from the ANZ National Bank. The deception is alleged to be a false representation contained in a loan application in the name of Mr Toraby for mortgage monies to be able to purchase 62A Ashby Avenue, and was to the effect that he held funds worth NZ\$112,000 with the Parsian Bank, another Iranian Bank.

[448] Mr Toraby came to New Zealand from Iran in 1997 when he was approximately 25 years of age. In Iran he had been involved in television production and direction and had a university degree in film and television directing. After arriving in New Zealand he found he was unable to obtain employment in his preferred occupation but for more than 15 years he has worked as a marketing and produce manager for an Auckland firm. In 2010 he was in a reasonable financial position earning \$95,000 per annum and had a motor vehicle provided by his employer. He owned a rental investment in Hillsborough. He was interested in acquiring another investment property and spoke with Kourosh Mehraban, whom he knew, towards the end of 2009 and who indicated his property at 62A Ashby Avenue, Glendowie, Auckland was for sale. He had some initial discussions with Mr Mehraban but was unable to agree on a price with him and later mentioned the matter to his friends Eli Devoy and Homei Azimi who offered to assist him by speaking directly to

Mr Mehraban. Ultimately it was agreed the property would be sold to Mr Toraby for \$590,000. When agreement was finally reached on price Mrs Azimi presented an agreement for sale and purchase to him for him to sign. He saw that Ms Saei was the vendor and he said he assumed she was Mr Mehraban's wife.

[449] The property itself was sold for considerably more than its recorded Quotable Value which, as at 1 July 2008 was \$240,000. The value of improvements was \$70,000. The dwelling house on the property was in poor condition and needed work on it. It did not have a code compliance certificate for work that had been undertaken but Mr Toraby was told by Mrs Azimi that the cost of remedying the property to code compliance standard would not be significant and so he proceeded with the purchase. As it happened the costs of repairing the property were considerable.

[450] In any event Mr Toraby needed mortgage assistance to proceed with the purchase. His rental investment at Hillsborough had a mortgage of approximately \$245,000 to the ASB. When the ANZ National Bank agreed to finance the purchase of 62A Ashby Avenue it required Mr Toraby to refinance the mortgage over the Hillsborough apartment with it so that the total mortgage secured over both properties was \$720,000.

[451] Mr Toraby, when discussing the purchase with Mrs Azimi and Mrs Devoy, raised the issue of an appropriate mortgagee and, he said, Mrs Devoy suggested that he use her husband as a broker as he had some two years previously on the application to ASB to purchase his Hillsborough apartment. He agreed and essentially left that aspect of the application to Mrs Devoy. However, unbeknown to him, Mrs Devoy did not use her husband but instead referred the mortgage application to Mr Pardo. A signed New Zealand Home Loans application was sent by Mr Pardo to New Zealand Home Loans or Kiwibank. Mr Toraby accepted he signed the application but did not meet Mr Pardo and thought he was dealing with Mr Devoy through Mrs Devoy. He provided her with his bank statements and credit card statement, his payslip, and signed the last page of the application form.

[452] The application brought on Mr Toraby's behalf for mortgage assistance with New Zealand Home Loans was declined, partly because they considered the amount being paid was too much relative to the Quotable Value indication of the value of the property, partly because they considered Mr Toraby to be "*highly geared*" but also because the cash

contribution was coming from funds in Iran. Mr Pardo was told by the Credit Manager of New Zealand Home Loans that the funds would need to have been held in a New Zealand Bank for at least “*a couple of months*”.

[453] Mrs Devoy then referred Mr Toraby to another broker, Mr A N Champion. A loan application was lodged by Mr Champion with the ANZ. Mr Toraby agreed the front page of the application was in his handwriting and he signed the application on 30 July 2010. There was included in the list of assets a sum of \$112,000 said to be with the ‘Parsinn Bank’ in Iran. Mr Toraby’s position was that he never spoke to Mr Champion about savings or money in Iran other than the fact that to assist with the transaction he intended to sell a share in an apartment he had there and bring the money to New Zealand. He did not fill in that part of the mortgage application which listed the assets and simply signed the application without checking the detail.

[454] He accepted he did not have, and never had had, an account with the Parsian Bank, the word ‘Parsinn’ on the application being a spelling error, and did not have \$112,000 with the Bank. He confirmed there was a Bank in Iran known as the Parsian Bank and said it was a small private Bank. He said he had two meetings with Mr Champion, in the first of which he filled out the first page of the application form and the second, when he signed the completed form.

[455] One of the documents sent by Mrs Devoy, by facsimile on 28 July 2010 to Mr Champion, was a translation of a document purportedly received from the Parsian Bank certifying that Mr Toraby had a balance of 820,000 Iranian Rials in his account. Next to the typewritten figure, purportedly the translation, is a handwritten figure of \$112,000. Mr Champion confirmed this was his handwriting and he had made the calculation himself.

[456] Consequently it seems that Mr Champion had that document on 29 July 2010 and the application was signed by Mr Toraby the following day. Given that Mr Champion accepted he had filled out the page containing the assets and liabilities I cannot exclude the possibility of Mr Champion having filled out the application form from the information he received from Mrs Devoy the preceding day. The name of the bank is misspelt, which is another indication that it was not filled out under Mr Toraby’s direction. Mr Champion said that he was told by Mr Toraby on 30 July 2010 that he had the equivalent of \$112,000

in the Parsian Bank. I do not have any doubt that Mr Champion gave his evidence honestly but I cannot exclude the possibility that, having regard to the passage of time, and the fact this was, as far as Mr Champion was concerned, simply another mortgage application, he concluded he was told that by Mr Toraby simply because the document was signed by Mr Toraby on 30 July 2010. I cannot exclude the possibility that Mr Toraby signed the document, as he said, without checking the detail of the information in it. There was no evidence that he was aware of the existence of the purported translated letter from Parsian Bank, plainly a false document, forwarded to Mr Champion by Mrs Devoy on 29 July 2010.

[457] Unlike, for instance, Ms Kardani, who was well aware of the fraud that was to be perpetrated on the Bank, having admitted so at interview, Mr Toraby accepted he had discussed the sale of his apartment with Mr Champion, and that he expected to get \$100,000 for that, which he intended to use in the purchase. He said he did not have a bank account in Iran, and had not had one since he left. He confirmed he had not seen the letter which was a purported translation of an account he was said to have with the Parsian Bank. Consequently I cannot, as far as Mr Toraby is concerned, satisfactorily conclude that he knew a false representation was being made to the Bank when he signed the loan application. Accordingly, as against him, the count has not been proved beyond reasonable doubt and I find him not guilty.

[458] Mrs Devoy's position in evidence was she had nothing to do with the loan application other than possibly faxing documents given to her by Mrs Azimi. As far as the false Parsian Bank document was concerned she accepted the document had been sent to Mr Champion but claimed she knew nothing about the document and, had she faxed it, it would only have been at the direction of Mrs Azimi. She accepted Mr Toraby may have passed her documents to be used in the loan application but said they were nothing more than his payslips and bank statements. It is, however, clear from the evidence that Mrs Devoy had a far greater involvement in the application than she was prepared to admit in evidence.

[459] Firstly, Mr Toraby was clearly relying on her to organize a mortgage broker and she referred him to Mr Champion after leading him to believe her husband was involved in the initial application. Mr Champion first met her in July 2010 and saw her at her home.

She told him that her husband had been a mortgage broker but was now an insurance broker. He confirmed he received the purported translation of the Parsian Bank letter and he calculated the Iranian currency as being \$112,000. That further supports Mr Toraby's position that he discussed having an apartment for sale for approximately \$100,000 but the actual sum entered on the calculation was calculated by Mr Champion, not by Mr Toraby. Mr Champion recognized Mrs Devoy's facsimile header and said in his evidence that the information sent to him to support the application came by facsimile from her.

[460] Mrs Devoy dealt with both solicitors involved in the transaction, Mr Singh who was acting for Ms Saei, and Mr Andrew Seton acting for Mr Toraby. There were produced facsimiles to both signed by her. Included in a memo found on the files of Mr Seton, and signed by 'Eli', is a "*certificate of transferring money letter from vendor*" which had attached to it a receipt from Persian Network Limited showing funds received "*from overseas*" of \$122,015 and a confirmation from Ms Saei saying that she had received \$105,000 from Mr Toraby. Ms Saei confirmed in her evidence that she received no monies and signed that note at the direction of Mrs Devoy. She said Mrs Devoy dealt with everything in relation to the sale of the property and she was also organising the mortgage brokers for Mr Toraby, the purchaser.

[461] The document attached to the memorandum from Persian Network Limited, showing funds received "*from overseas*" of \$122,015 and dated 15 August 2010 was yet another false document. Mr V Bigy, the Manager of Persian Networks Limited confirmed, in evidence that was not challenged, that the document was not a genuine receipt as the amount exchanged was too large and the receipt number, 1481, was plainly false as his receipts did not number less than 2000. Further, a genuine receipt was issued under 14815 by Mr Bigy to an 'M Ghorbani'. The false receipt in Mr Toraby's name appears to have had the number '5' removed from the genuine receipt and, according to Mr Bigy, the name in the customer section had been changed to 'Toraby' rather than 'Ghorbani'. There are one or two other indications on the false document that indicate it is a straight copy from a genuine Persian Network Limited receipt 14815, including a telephone number appearing in the identical place on both receipts and in an identical hand. Other writing also seems similar or identical.

[462] Consequently, although I accept that Mrs Azimi was heavily involved in this transaction, it is Mrs Devoy's 'footprints' that appear over the false documents supplied to the solicitors and, I am satisfied, sent to Mr Champion, the mortgage broker, by her. Again this is consistent with what I have found to be her role in the informal partnership she seemed to have with Mrs Azimi. Mrs Azimi certainly prepared the agreement, was involved in persuading Mr Toraby to undertake the purchase, and deposited \$122,000 into Mr Toraby's ASB account on 16 August 2010 with the reference 'Persian Network', presumably so as to be able to convince the Bank that the funds from Iran were now available. Mr Champion sent an ASB bank statement showing this deposit to the ANZ in support of the application. However the cheque on which the funds were drawn from the account controlled by Mrs Azimi was stopped on the day following. Mr Toraby's bank statement also later recorded the reversal of the cheque on 18 August 2010 but that up to date statement was never shown to the ANZ, or for that matter Mr Champion.

[463] The property was sold to Mr Toraby for \$590,000, an increase of \$172,000 over the amount recorded in the agreement when Ms Saei was the purchaser. Surplus funds of \$222,366.13 were generated when the settlement was completed, Mrs Devoy receiving three payments, one of \$214,000, another of \$7,250, and another of \$610.32 from the net proceeds of sale following settlement. Consequently I am satisfied that Mrs Devoy played her usual role in this transaction of providing documents she knew to be false to the mortgage broker to support the loan application. She knew the application represented that Mr Toraby held funds of \$112,000 with the Parsian Bank because she had supplied the purported translation of the fictitious account supposedly in Mr Toraby's name to Mr Champion by sending it to him by facsimile on 26 July 2010. The facsimile has the same 'get up' as the Devoy facsimile header. The position for Mrs Devoy was that she did not deny the document was sent to Mr Champion from her facsimile, simply that although she accepted she may have sent it, she did so as it was a document passed to her by Mrs Azimi. I do not accept that. That was not the way the partnership between the two operated. The evidence is consistent with the evidence in relation to other counts with Mrs Devoy supplying false documents to support mortgage applications and I am satisfied she did the same on this occasion which led Mr Champion to include the false figure in the mortgage application, and Mrs Devoy knew that would occur.



[464] Accordingly I am satisfied beyond reasonable doubt that the representation as to Mr Toraby holding funds of \$112,000 with the Parsian Bank was false, it was a material particular as far as the loan application was concerned, as Mrs Devoy well knew, and she deliberately deceived the mortgagee by providing a false document knowing that it would lead to the representation being made in the mortgage application. There can be no issue of claim of right.

[465] Accordingly I find the Crown has proved each of the elements of this count against Mrs Devoy and she is guilty of the same.

#### **Count 24 – Representation concerning payment of monies**

[466] This count is the only other count faced by Mr Toraby in relation to the purchase of 62A Ashby Avenue, Glendowie, Auckland. He is jointly charged with Mrs Devoy of obtaining property, namely the house at 62A Ashby Avenue, by deception by representing that he had paid \$105,000 to Ms Saei to purchase the property.

[467] Settlement of the purchase by Mr Toraby of 62 Ashby Avenue was effected on 18 August 2010. As referred to in the analysis of count 23, Mr Champion forwarded evidence of a deposit of \$122,000 into Mr Toraby's ASB account on 16 August 2010. The reference given in the entry by the depositor was 'Persian Network', no doubt to align the monies with the false receipt from Persian Network under receipt number 1481 supposedly for Mr Toraby for the sum of \$122,015, also referred to in the analysis of the previous count. Consequently the Bank were led to believe that monies had arrived from Iran, had been exchanged by Persian Network, and were now deposited in an ASB bank account and were available for use in the purchase by Mr Toraby.

[468] However, the cheque was stopped and the payment reversed but the ANZ, the mortgagee for the Ashby Avenue transaction, were never told that. The cheque had been provided by Mrs Azimi using a Christchurch BNZ account for her business 'Just For You'. Mr Toraby's evidence in relation to the cheque was that it was cancelled because his money had now become available in Iran. His initial intention was to repatriate the monies to New Zealand to enable them to be used for the purchase but he said he was told by Mrs Azimi that Kourosh Mehraban was happy to be paid the monies in Iran as he had

difficulties in New Zealand with the Inland Revenue Department and did not want the money paid to him here. Mr Toraby said he was agreeable to the arrangement as it meant he would not need to pay commission or an artificially high exchange rate to a money changer such as Persian Networks in Auckland. He denied having anything to do with the false receipt from Persian Networks saying that the first time he saw the document was when he was being interviewed at the Serious Fraud Office. Consequently Mr Toraby's position was that the \$105,000, which Mrs Devoy represented to the solicitors acting on the transaction as having been paid to Ms Saei, was actually paid in Iran to Mr Mehraban.

[469] Mrs Singh was acting for Ms Saei, the vendor, on the transaction and a signed receipt for \$105,000 was given by Ms Saei to her as already mentioned. That document was faxed to Mr Seton, the solicitor acting for Mr Toraby, on 18 August 2010, the fax being sent from the facsimile at Mrs Devoy's home as the facsimile track is recognisably from that.

[470] Further, Mr Toraby signed and forwarded a typewritten document to both solicitors confirming that he had paid \$105,000 to Fatemeh Saei, the vendor. On 17 August 2010 a facsimile was sent from Mrs Devoy's machine, purportedly under the signature of Mr Toraby, saying that "*I have already paid vendor in overseas some (sic) amount as she requested and I have a receipt for that for my file*". At interview Mr Toraby accepted he had signed the document but at trial he said it was not his signature and had confused it with another document. In any event Mrs Devoy accepted that the words emblazoned "*urgent*" on the facsimile were hers and as it was sent from her machine she must have sent it on to Mr Seton.

[471] Mr Leabourn, for Mr Toraby, accepted in closing that Ms Saei had not been paid the monies. The defence was that \$105,000 was paid to Mr Mehraban in Iran. There is no other evidence of this, other than Mr Toraby's assertion, and the documents signed by him, or purportedly signed by him, and sent to the Bank. The issue, therefore, is whether I am satisfied on the Crown case that the possibility of the monies being paid as Mr Toraby said they had been discounted. Clearly if I believe Mr Toraby, or if I accept that what he said might possibly have occurred, there will be a reasonable doubt and he is entitled to an acquittal.

[472] Mr Toraby said in his interview with the SFO interviewers on 2 October 2012 that he had a one-third interest in an apartment in Iran which he effectively sold to his brother, the proceeds of the sale being paid as directed by Mr Mehraban in Iran, and that this payment was the contribution of \$105,000 paid to the vendor, which he accepted was not Ms Saei. He said that he would be able to provide some form of documentary evidence from Iran verifying that, but none was forthcoming at trial. I have already discussed the assets listed in the unsuccessful loan application to the ANZ National Bank made on his behalf by Mr Champion which purported to state that he had \$112,000 with the Parsian Bank. The evidence failed to reach the point where I was satisfied that Mr Toraby knowingly made the representation. However he admitted signing the earlier loan application lodged on his behalf by Mr Pardo with New Zealand Home Loans, which application failed, in part because the Bank required evidence that the monies said to be held in Iran had been transferred to a New Zealand bank account and had been there for at least two months. That application listed as assets a bank account of \$100,000 in Iran, yet in his interview Mr Toraby said he did not have a bank account there, and had not held one since he left, and further the application stated he had other properties to a value of \$180,000 also in Iran. That application was signed by Mr Toraby on 18 July 2010 and was materially different to claimed assets in Iran shown on the application signed by him on 30 July 2010.

[473] On 18 August 2009 Mr Seton sent a facsimile to Mr Toraby asking for a Bank cheque for \$108,777.81, in accordance with his settlement statement, for settlement of the purchase. Mrs Devoy replied on behalf of Mr Toraby sending Mr Seton a facsimile on 18 August and stating that she would “*drop you the bank chq today/certificate of transferring money letter from vendor, thanks, Eli*”. The fax attached the fake receipt from Persian Network Limited for \$122,015 together with the note signed by Ms Saei that she had received \$105,000 on 17 August 2009 from the purchaser, Mr Toraby. Mr Toraby had already confirmed this by sending a note to Mr Seton confirming that he had paid \$105,000 to the vendor, the note being sent from his place of work.

[474] The Crown submission was that this was simply another fraud on the Bank, perpetrated by concocting documents to lead the solicitors to believe that part of the purchase price had been paid, when it was not. Deposit of funds from Mrs Azimi’s account into Mr Toraby’s ASB account was, the Crown submitted, simply done to provide evidence

that the monies were in New Zealand as the rejection by New Zealand Home Loans of the application clearly indicated to Mrs Devoy and to Mr Toraby that this difficulty would have to be overcome. The Crown submits that Mr Toraby is not to be believed when he said that the funds were no longer needed, and so the cheque was cancelled, as monies had become available to him in Iran for use in the transaction. Mr Toraby admitted that the monies were never paid to Ms Saei, so his representation in that respect to his own solicitor has to be false and there was no evidence to support his contention that the monies were paid to Mr Mehraban in Iran either.

[475] Mr Toraby was consistent in his evidence and in his interview, in saying that he believed the true vendor was Kourosch Mehraban. He would have seen Ms Saei's name on the agreement for sale and purchase but said he believed her to be Mr Mehraban's wife. He also had independent dealings with Mr Mehraban over the sale and his discussions with Mrs Devoy and Mrs Azimi were to the effect that Mr Mehraban was the vendor, something both confirmed in their evidence. The discrepancies in the loan applications lead me to conclude that Mr Toraby may have inflated his assets for the purpose of the application brought on his behalf by Mr Pardo but he has been generally consistent in asserting that he had an interest in a property in Iran. Although I am not drawn to the point where I can say that I believe Mr Toraby, I cannot satisfactorily say that his account of a parallel transaction in Iran for the purposes of his purchase was untrue. He was not a member of the Ghorbani clan and although Mrs Devoy assisted him by paying the balance of monies needed for the purchase, a Bank cheque for \$3,707.81 drawn by her from a Kiwibank account in her name, the evidence satisfies me that this was intended to be a purchase by Mr Toraby for himself, and not in his capacity as an agent for an undisclosed principal such as Mrs Devoy or Mrs Azimi.

[476] Accordingly, as far as Mr Toraby is concerned, by a narrow margin, I have not reached the point where I can say the Crown has proved beyond reasonable doubt that he made the representation over the payment with the intention of deceiving the solicitors, or that he knew it was false in a material particular. He knew it was false in the sense that the monies were not paid to Ms Saei, but the material particular was the payment of the monies and I cannot discount the possibility the equivalent of NZ\$105,000 was paid in the way he said, unlikely as it seems to me. Consequently I have a reasonable doubt and, accordingly, I find Mr Toraby not guilty of count 24.

[477] Mrs Devoy is also jointly charged with that count. Had the monies not become available in Iran, as Mr Toraby alleges, I am certain she would have continued the deception on the solicitors so as to enable the transaction to proceed, the documents would have been used in the way they were with Ms Saei representing that she had received \$105,000 from Mr Toraby, Ms Saei said she signed the acknowledgement at Mrs Devoy's direction and on the understanding that matters had been sorted out by her with Mr Toraby. However, the substance of the alleged false representation is that a payment of \$105,000 had been made which enabled the transaction to proceed. As I am not able to discount the possibility that monies were in fact paid in Iran to Mr Mehraban or as he directed, it must follow that Mrs Devoy's representations to the solicitors that the monies had been paid overseas may, on this occasion, been made without the intention of deceiving the solicitors. She would have known that the monies were not paid to Ms Saei but the material particular is the payment of the actual amount of monies in association with the purchase. Accordingly I cannot say that the allegations against Mrs Devoy in respect of this count have been proved against her to the required standard of beyond reasonable doubt and so I find her not guilty.

### **Summary**

[478] The Crown submitted that I was entitled to consider the evidence of the defendants' conduct with respect to one property or count as evidence relating to others. As can be seen from the verdicts I have returned I have accepted that the necessary nexus for the admission of inter-related offending as propensity evidence exists. Propensity evidence is evidence that tends to show a person's propensity to act in a particular way. The ability of the Crown to offer propensity evidence against defendants is governed by s 43 of the Evidence Act 2006. The frequency with which the acts or circumstances which are the subject of the evidence have occurred is a very relevant consideration and the range of counts and their spread between mid-2007 and the end of 2010 is significant. There is considerable similarity between the acts and circumstances which are the subject of the evidence and the allegations concerned banks that were effectively defrauded by those accused whom I have found guilty. The extent of the similarities can be seen in the counts using companies related to the defendants to falsely represent earnings and employment, as with counts 1, 2, 4, 5, 9, and 19, and the counts where documents were created representing false employment with unrelated parties, or with false payslips, in the loan

applications the subject of counts 7, 8, 11, 14, 15, and 22. There are other instances where deposits are said to have been paid by a defendant to a related-party vendor or a vendor inserted in the transaction through Mrs Devoy, such as, counts 3, 6, 10, 13, 16, 18, 20, and 25. There are also similarities in the false representations concerning funds held in bank accounts and loan applications seen in relation to counts 9, 11, 14, 17, and 19. Although I acquitted Mr Toraby in relation to counts 23 and 24, and Mrs Devoy in relation to count 24, there is no doubt that once again false supporting documents to represent funds supposedly brought into New Zealand were provided to a mortgage broker and to a Bank. There were instances of false bank account numbers with the name of the owner of the account swapped for the name of the applicant for a loan. Overall, therefore, there was clearly a pattern of conduct that provides the necessary nexus for the admission of inter-related offending.

[479] Large sums of money and property was obtained through the Bank approving loan applications that would never have been approved had the true circumstances been known to the Banks. I agree with the Crown submissions that findings that Mrs Devoy was responsible for false documents in one or more counts means that I am able, as I have, to use the findings to support similar findings in respect of other counts in the way outlined in the indictment, and in the undermining of her veracity and credibility as a witness that she was not responsible for the false documents and that she acted at all material times in good faith. That approach can also be taken with the Ghorbani brothers who prepared false documents for use in loan applications.

[480] Overall, the sheer volume of false documents sent by Mrs Devoy, her repeated dealings with Banks, mortgage brokers and solicitors in relation to those documents lead, as with the other evidence to support the counts, inevitably to the conclusions I have reached in relation to the counts on which she has been found guilty, as with the counts for her brothers for which false documents were created by them.

[481] Accordingly, the verdicts returned are as set out in these reasons and in the schedule of verdicts attached.

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**Gibson DCJ**

**SCHEDULE OF VERDICTS RETURNED**

**Eli Devoy (aka Ellie Stone, aka Eli Ghorbani)**

Guilty of counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 15, 16, 17, 18, 20, 21, 22, 23, 25

Not Guilty of counts 12 and 24

**Mehrdad Ghorbani (aka Mohammad Ghorbani Sarsangi)**

Guilty of counts 1, 2, 4, 12, 13, 14

**Mehrzad Ghorbani (aka Mehdi Ghorbani)**

Guilty of counts 1, 2, 3, 4

**Hassan Salarpour**

Not guilty of counts 11, 15, 16

**Nasrin Kardani**

Guilty of counts 18, 19, 20

**Javad Toraby**

Not guilty of counts 23 and 24