

Mr Anderson, the defendant, has been found guilty by a jury of one count of fraud. In essence, it was alleged that in the period March to August 2018 he used fraudulent means in the course of his employment to obtain for himself the benefit of the possession and use of an excavator. The facts as I find them to be are as follows. At the relevant time, the defendant was employed as a project manager for Zinfra Pty Ltd. Ostensibly on behalf of his employer, the defendant obtained a quotation from DLM Machinery for the purchase of an excavator and associated attachments, along with a trailer to carry those items. The settled sum was \$49,060 with the quotation originally including delivery. In order for the equipment to be purchased, DLM had to be established as a vendor within the company's financial system, and the purchase approved by someone above the defendant's level. The defendant asked an internal business support officer to establish DLM within the system, and when asked what it was for, he initially said "the purchase of equipment". Later, when greater detail was requested, he told his colleague that it was for the "purchase of machinery attachments and hire of equipment", and that the amount was \$14,500. He provided a reference to a company project. The evidence was that at the time this project had achieved practical completion and was "in clean up" phase, part of which involved the removal of on-site excavators. The evidence did not reveal the precise detail of this but the defendant spoke to his manager, and then emailed the business support person. He told her that the original purchase had been rejected and that he had mistakenly put \$14,500 when it was meant to be \$1,450. He asked that the matter be submitted for the revised amount. A purchase authority form was then issued in the sum of \$1,450 for the purchase of machinery attachments and equipment. Using that approval and without authority, the defendant created four separate purchase orders relating to DLM, and entered those in an internal invoice. That invoice shows the purchase orders as follows: 1. Hire of equipment – \$14,500; 2. DLM – \$1,450; 3. Hire of equipment – \$14,500; 4. DLM hire of equipment – \$14,150. The total of those amounts is \$44,600 which, with the addition of GST, is \$49,060. On that single internal invoice, the company paid the total amount to DLM. In the meantime, the defendant had told DLM that he could not provide one purchase order, but that if DLM invoiced the single amount, he would pay it against multiple purchase orders. He also arranged with DLM for the trailer to be registered in his name and for him to pick up the equipment rather than it be delivered. On receipt of DLM's invoice the company paid the money, and the defendant took the equipment. It was not until April 2020 that the company was alerted that there might have been a problem with a purchase. At about the same time the defendant was made redundant. Police found the.

excavator on his property. When interviewed he admitted that he had had it in his possession and had used it on his own property, but said that it had been used at one of the four company projects he had in mind when arranging the excavator's purchase. He provided to police an innocent explanation for the documents, acquisition and his possession. He gave evidence to that effect. As to the possession issue, he said it was more convenient to keep it at his property because of its closer proximity to where it was needed. I note that the company has refused to take possession of the excavator despite having paid for it, and it remains in the defendant's possession.

The defendant is now 43 years old. He has no recorded history of offending of any significance. He has been married for about 20 years and has two children, both of high school age. I was told he has a strong employment history, firstly as a qualified electrician and then in project management in which he has been involved, again, for about 20 years. He was able to find similar employment after he was made redundant by Zinfra. His present employer is aware of this matter and although his continued employment might be an indication of the attitude, it is a real possibility that he might lose that employment. That is as high as it can be put. That employment only allows him one weekend off in every two. The defendant's counsel submitted, and it seems to be conceded, that there is no evidence to contradict the fact that the excavator had been used on one company project. The defendant said he used the excavator for about 70 or 80 hours on that project and had only used it on his own property for some "minor works, doing a little bit of clearing and putting in a few fence posts here and there". He estimated 20 to 30 hours on his own property. There seems no good reason to reject that evidence. I was told that he did not use the excavator after he was made redundant. I was also told that at a meeting about this issue with company personnel, he asked that the excavator be taken back, a request he repeated to police through his lawyer after he had been summonsed. And so it remains in his possession and is not used. The defendant's counsel also pointed out that he was originally charged with obtaining goods by false pretences, a charge that could have been dealt within the Magistrates Court had the State not decided to charge him with fraud instead. I observe that there is considerable overlap in the operation of the two crimes. The defendant was paid his statutory entitlements on the redundancy, but there remains an amount to which I assume he may be contractually entitled, and which has been withheld pending resolution of issues between the company and the defendant. The figure withheld is in the order of \$100,000 before tax.

This is a relatively serious case of fraud. I say that because it involves a breach of trust, and as such general deterrence is an important factor. The defendant submitted false information which he knew to be false, and manipulated documents within the system – entering false information which he knew to be false – with the intention of gaining a benefit. As counsel for the State submitted, such crimes are difficult to detect and investigate. The trigger for the company investigation was an anonymous tip off; otherwise the company would have been none the wiser to the fraud. The system was such that there was nothing on the face of things to attract any attention. The defendant does not have the benefit of a discount arising from a plea of guilty. On the other hand, it cannot be said the fraud was carried out for the purpose of funding a profitable lifestyle. The defendant gave evidence about being overworked and operating without adequate support; generally a poor working environment. I suspect, although I can put it no higher, that the defendant was disgruntled and that his actions were a retaliatory form of compensation. Unlike many cases of this and similar crimes it was not money that was obtained or services paid for by the victim, where the proceeds have disappeared. This case involves a tangible item that was not hidden, and remains in a usable condition, although of course it is not now new. It seems highly likely that one way or another, the company will be able to recover its loss. I take into account that but for the exercise of a prosecutorial discretion, this matter could well have been resolved in the Magistrates Court, and probably at an earlier time. I note that Crown counsel fairly submitted that immediate imprisonment was not warranted and that the matter could be properly dealt with by way of a suspended term.

Mr Anderson, I have set out the facts and what I see to be the relevant considerations. This was a dishonest and arrogant manipulation of your employer's system for your own benefit. However there are things that operate in your favour and I am satisfied the case can be properly dealt with as submitted by the prosecutor. You are convicted and sentenced to 10 months' imprisonment the execution of the whole of which is suspended on condition you do not commit any crime punishable by imprisonment for a period of two years. In the present circumstances of your employment I do not consider it necessary or appropriate to make any further order.

I was asked to make a compensation order in favour of Zinfra in sum of \$49,060. At the time, of the hearing I raised concerns about the title to the excavator and what the defendant might properly do with it even if he were to pay the sum claimed. Nothing further has been put to me about the issue. I am prepared to make an order in favour of Zinfra Pty Ltd for an amount of

compensation to be assessed, and to adjourn the further hearing of that application to a date to be fixed. I note that both counsel have now agreed to that course.