

Asil Nadir found guilty

22 August 2012

Asil Nadir has been convicted of stealing millions of pounds from Polly Peck International, a multi-national company he built and led. Over three days at the Central Criminal Court the jury returned guilty verdicts on 10 counts of theft conducted between 1987 and 1990. He is to be sentenced tomorrow 23 August. The Jury found him not guilty on three counts of theft (See note 1).

Responding to the verdicts, the Director of the SFO, David Green CB QC said:

"The conviction of Asil Nadir of theft on a grand scale from a public company nineteen years after he fled the jurisdiction is a remarkable achievement. It reflects the resolute commitment and determination of the prosecution teams and counsel who have worked on this case since 1990, led latterly at the SFO by Clare Whitaker and Julia Ambler, and strongly supported by successive Directors. It confirms that the proper role of the SFO is to investigate and where appropriate, to prosecute the most difficult cases of fraud and corruption. These cases are high profile and carry high risk; they can only be addressed with clarity, expertise and resilience."

Polly Peck

The origins of the company go back to 1959 when the company was first incorporated as Polly Peck (Holdings) Ltd. In 1980 Asil Nadir, a Cypriot businessman then resident in the UK and with joint British and Turkish nationality, gained a controlling interest. By 1985 the company had limited liability, and was renamed Polly Peck International Plc ("PPI"). It was initially a holding company of a group of businesses involved in the garment trade in the east end of London but under the chairmanship of Asil Nadir it was set on an expansionist course. By 1990 it had developed into an international conglomerate of 200 subsidiary companies involved in food, electronics, leisure, as well as textiles. One of PPI's best known acquisitions was the international canned fruit business, Del Monte.

The global activity of PPI, operated from its head office in Berkeley Square, London, is illustrated by its regional management through its main trading centres in Nicosia (aka Lefkosa), Istanbul, New York, and Hong Kong. Its trading activities embraced many countries but during 1990, with the extraordinary rise of PPI, which had achieved a FTSE 100 ranking, concerns began to surface about its financial situation and its ability to pay its debts. This culminated in the board of directors calling in the Administrators. A High Court order in October 1990 appointed Coopers & Lybrand and Touche Ross as Joint Administrators.

The collapse of Polly Peck and the losses caused to investors and lenders received considerable publicity. The Metropolitan Police and the Serious Fraud Office became involved and a criminal investigation commenced in August 1990.

Though the events covered during the trial happened over twenty years ago only now have proceedings been able to be concluded. The defendant, already charged with theft from PPI and due to be tried at the Central Criminal Court in 1993, fled the jurisdiction in May that year to the Turkish Republic of Northern Cyprus, a state not recognised by the UK and the international community generally and from where it proved impossible to extradite him. However in July 2010 he was granted conditional bail in his absence and in August 2010 he

returned voluntarily to surrender himself to the Central Criminal Court, subject to stringent bail conditions.

The prosecution case

It was uncontested that Asil Nadir gave instructions to authorise the movement of funds out of a number of PPI bank accounts; including one with National Westminster Bank and two with Midland Bank. He undertook this on his own signature, without consulting PPI's board of directors. He had ensured that he retained authority being both chairman and chief executive to do this, applying an autocratic approach to his management style. The transfers were made to buy shares in his or his family's name or for investments for personal benefit. The sum involved in the indictment amounted to some £33.1 million and US\$2.5 million, though the sample thirteen counts are only representative of a bigger picture. (The full extent of transfers from PPI is estimated to total in excess of £380 million).

The investigation uncovered a complex structure of offshore companies, in Switzerland, in the Bahamas and elsewhere, through which most of the movements of money were channelled. To effect these movements, Nadir used a company that had been set up specifically to manage his private and family's interests, South Audley Management ("SAM"). Two directors of SAM, Elizabeth Forsythe and Jason Davies, were instrumental in instructing the offshore companies on Nadir's behalf.

The end use of the money transferred included the covert purchase of shares and share options in PPI and other businesses by companies controlled by Nadir and his family. Payments were also made to banks so that they could make loans to companies owned or controlled by Nadir or which were part of the Nadir Family Trust.

It was the defendant's claim that though PPI money had been transferred from its bank accounts and not used for PPI purposes, arrangements had been made for balancing deposits to be made, in cash in Turkish lira into banks in northern Cyprus. The money was paid into the account of Unipac Packaging Industries, a wholly owned subsidiary of PPI in northern Cyprus, which Nadir claimed acted as the banker for the near east group. Nadir claimed that these cash deposits were paid into accounts held by Unipac at the Industrial Bank of Kibris (IBK) and Impexbank (both of which Nadir owned). The notion was that Turkish lira would be used to finance the group's expansion in the region.

IBK bank documents, purporting to evidence the deposits, were suspected of being created to convey the illusion of actual cash in the bank, as were the accounting records of Unipac which appeared to show the receipt of the cash deposits. Furthermore the idea that such large volumes of Turkish lira notes were collected and carried to the bank in suitcases on a regular basis was not considered to be credible. The considerable volume of Turkish lira, supposedly provided by numerous business contacts, family and friends, Nadir explained, was a commonly adopted way of exchanging Turkish lira, then a weak currency, for a hard currency (such as sterling or dollars) at above the official rate set by the Central Bank of the Turkish Republic of Northern Cyprus. He stated that the Unipac accounts held at IBK and Impexbank were the means he used to achieve this and that this benefitted PPI.

It was the defendant's argument that loans made without formal documents or involving large amounts of cash was not regarded as unusual in business dealings in northern Cyprus and Turkey. He also said that the business practices considered to be the norm in western society were not necessarily appropriate in northern Cyprus and Turkey, where the culture was very different. Investigating accountants from the Administrators who visited northern Cyprus in 1991 to inspect IBK records were denied access to much of what they wanted to examine and were therefore unable to determine veracity of the records of the alleged Turkish lira deposits and could place no confidence in them.

Investigation and proceedings

With the commencement of the SFO investigation in August 1990, supported by the Metropolitan Police, the defendant was first interviewed in September that year. He was first charged in December 1990 and the case sent to the Central Criminal Court for trial to open in 1993. He took flight from the jurisdiction ahead of the trial, in contempt of court, in May 1993 and returned to Northern Cyprus. Extradition was not possible so a considerable period of time had elapsed prior to his return to the UK.

In the meantime the defendant applied, in absentia, to stay the indictment (then comprising 66 counts) as an abuse of process. This was rejected by HHJ Potts at the Central Criminal Court in January 2001 as itself being an abuse of process as the defendant had not submitted himself to the jurisdiction of the court.

In 2010, the defendant, through a media interview publicly declared his desire to return to the UK to contest the charges. He arrived at Luton Airport on 26 August 2010 and appeared before HHJ Bean at the Central Criminal Court and was bailed for trial. His bail conditions included surety of £250,000, surrender of travel documents, residence at his rented Mayfair house, weekly reporting at a police station and night curfew restrictions with an electronic tag.

The trial opened on 23 January 2012. The jury was sent to consider their verdicts on 10 August. Unanimous verdicts on four counts were returned on 20 August (three guilty one not guilty) verdicts on the remaining accounts were returned today.

Matters relating to compensation and costs are to be heard on 27 September 2012.

Notes for editors:

1. The indictment contains 13 specimen counts of theft, contrary to section 1 (1) of the Theft Act 1968. A copy of the indictment is attached to the electronic distribution today of this press release. The total sum relating to the indictment is £33.1 million and US\$2.5 million. The total amount alleged by the SFO to have been stolen from PPI is £146 million and US\$6.4 million.
2. The verdicts on each count are: Guilty on counts 1, 2, 3, 5, 6, 7, 8, 10 12 and 13. The not guilty on counts are 4, 9 and 11.
3. David Green CB QC became Director of the Serious Fraud Office on 23 April 2012.