



## **SUMMARY**

### **GOVT OF USA v. STANLEY TOLLMAN**

Since the judgment in the appeal of Stanley Tollman is of such length, this is a summary compiled by the court based its judgment. It is not part of the judgment itself. This is an appeal by the US Government from the decision of Senior Judge Workman. The District Judge declined to order the extradition of ST on the grounds that by reason of the passage of time it would be unjust and oppressive to do so, pursuant to s.79(3) of the Extradition Act, 2003. This court has allowed the appeal of the US Government in part: it has ruled that it would not be unjust for ST to be extradited to face charges that he defrauded US banks in relation to loans from the banks to the Tollman-Hundley hotels of which ST was a co-founder.

But the court agreed with the judge that it would be unjust to extradite him in relation tax fraud charges concerning accounts in Guernsey. The DJ's decision was based on a combination of his conclusions as to injustice and oppression; he concluded that it would be oppressive to extradite ST in the light of his wife's deteriorating health; it would be likely to worsen her condition and deprive her of the support of her husband were ST to be extradited. The court has ordered that the SDJ should re-consider his conclusion in the light of this court's decision that

the condition of his wife is the only basis upon which ST's extradition could properly be barred under s.79.

The offences were alleged to have taken place some 16 years ago, between 1991 and 1996. ST was indicted in April 2002. He had left the USA for the UK ten days before he was indicted. He failed to attend his arraignment on 24<sup>th</sup> April, 2002. The US requested his extradition in March 2003 but withdrew that request in April 2004 so that it could rely on the Extradition Act 2003.

Between 2003 and 2004, four co-accused were tried, in New York, and convicted of the conspiracy of which ST was accused, including the co-founder of Tollman-Hundley hotels, Hundley, who was sentenced to 8 years imprisonment, its General Counsel, and its financial adviser.

The SDJ reached his conclusion that it would be unjust by virtue of the passage of time to extradite ST on the basis that witnesses and documents of possible assistance to ST were no longer available; they had either gone missing or were dead. This court has disagreed with the SDJ; there was no sufficient basis for concluding that those witnesses or documents which are no longer available would have undermined the prosecution or assisted the defence, either that there was no fraud or, if there was, that he took no part in the conduct of Tollman-Hundley's commercial affairs. That the missing witnesses or documents might have supported that defence depended on the mere assertion of ST. Moreover, in so far as he could not now call witnesses who he asserted could help, he had not been deprived of that opportunity by reason of the passage of time; if the trial had been heard within a reasonable period, many of those witnesses would either not have helped or would not have been called.

In reaching that conclusion the court stressed two particular features of this case. Firstly, during the period of investigation in the late 1990s ST had the benefit of legal representation and assistance. Despite the participation of his representatives in that investigation, nothing had apparently been obtained which he could now show might assist his defence. Secondly, although he had left the United States lawfully, he had chosen not to attend his arraignment, because he feared that he would not be granted bail. He had left his co-accused to face the trial.

At paragraph 94 we conclude :-

“As each year passed, the burden of his years grew heavier. But it must be recalled that at the time he chose to pay so little attention to his commercial affairs, as he himself asserts, he was already in his sixties. To expect a man of 77 to face trial in relation to offences alleged to have been committed when he was already over 60, does not lead us to the conclusion that it would be unjust to do so. He had the opportunity to identify material to support his case during the course of his investigation; he had the opportunity to participate in the trial in which a conclusion of conspiracy to defraud was made, but chose not to do so and left others to face the consequences. In those circumstances, we do not conclude that the passage of time has caused him an injustice.”

This decision follows eighteen hearings in the Magistrates’ Court. This is the second full hearing before the Divisional Court, the first being in September 2006 before the Lord Chief Justice. In the previous decision

of this court Lord Phillips CJ emphasised that one of the objects of the 2003 Act was to ensure expedition (see paragraphs 73, 79 and 80). He stressed the obligation of the parties and those acting for them to cooperate to ensure that objective is achieved (see paragraph 79). The observations of the Lord Chief Justice have had no effect. The prospect of yet a further hearing is dispiriting. At the conclusion of the judgment in ST's appeal, we say (para 119):

“The difficulties of achieving the statutory objective of a simple and speedy process which the 2003 Act attempted to achieve might also be diminished by greater assistance offered to those responsible for determining extradition cases. Although we have differed, to an extent, from the conclusions of the Senior District Judge, we can only wonder at how he managed to maintain so authoritative a grip upon proceedings littered with detailed, lengthy and diverse written argument, based upon an abundance of factual material. The determination of such extradition cases cries out for assistance analogous to that which is provided to coroners. In cases of this length and complexity we can see good reason why High Court Judges should be appointed as Deputy District Judges and nominated to manage and conduct a case such as this. Such a judge would have an opportunity, not available to the Senior District Judge or to his colleagues, to run a case from beginning to end on consecutive days, hearing all such arguments as arise, and determining them as the resistance to extradition proceeds. But these suggestions are of no assistance in the reaching of the ever-receding objective of a final conclusion in this case.”

This court has dismissed the appeal against the refusal of the SDJ to extradite Mrs Tollman on the grounds of her deteriorating health, pursuant to s.91. We have agreed with the SDJ that it would be oppressive to do so.