

HUMAN TRAFFICKING WORKING GROUP

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CASE REPORT

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Case Name	R v Johan Sieders & Somsri Yotchomchin
Reported in	<i>R v Sieders and Yotchomchin</i> [2006] NSWDC 184 <i>Sieders v R; Somsri v R</i> [2008] NSWCCA 187
Date(s)	Trial: June 27–July 26, 2006 Sentencing: December 8, 2006 Appeal: May–August 13, 2008
Court/Jurisdiction	District Court of New South Wales
Charges	s 270.3 <i>Criminal Code</i> (Cth): Slavery s 270.6(2) <i>Criminal Code</i> (Cth): Sexual servitude - conducting a business that involved the sexual servitude of other persons, knowing about that sexual servitude
Appeal	NSW Court of Criminal Appeal

Table of Contents:

Case Summary	2
Media Coverage.....	3

Case Summary

The two accused in this case, Mr Johan Sieders and Ms Somsri Yotchomchin, were brothel owners in Penrith, Sydney who were involved in the employment and sexual exploitation of several women from Thailand. The transfer of the victims was orchestrated by Ms Montha Phuncharaen, usually referred to as Pat, a recruiter in Thailand. She arranged for a male escort and equipped him with a large sum of money in order to travel with the victims to Sydney where they fraudulently obtained tourist visas.¹ In Australia, the women were then taken to meet Ms Yotchomchin, who took the loaned money from them whilst the male escort returned to Thailand. Ms Yotchomchin subsequently obtained fraudulent bridging and protection visas from Mr Mofazzal Haque Kazi, a corrupt immigration official, which allowed the women to remain in Australia.² The women were then shared between the four brothels operated by Ms Yotchomchin and a further brothel operated by Johann Sieders and his wife Rapearn Arpornrat.³

Police investigations⁴ revealed that the cousin of one of the victims (referred to as LK by the District Court, and as BB in the appeal) had previously travelled to Australia to pay off a family debt to another party, and that LK had joined her cousin for this purpose. After four weeks of sex work, Ms LK became uncomfortable with the situation and — with the help of a customer — contacted immigration authorities who then attended the premises, leading to the proceedings against the two defendants.

The women were working in the brothels in order to pay off debts of AUD 45,000, of which some money was remitted to Thailand, presumably for the recruiters, and AUD 30,000 representing the cost of their stay in Australia.⁵ At trial, evidence was adduced that Mr Sieders remitted sums of AUD 9,595 for a victim name Ms LK, AUD 8,625 for Ms WS, and AUD 8,155 for Ms RS back to Ms Phuncharaen in Thailand as part payment for the women.⁶ In addition, Ms Yotchomchin had transferred amounts of AUD 8,625 for LK, AUD 8,000 for WP, and two payments of AUD 7,700 and AUD 6,800 on other occasions for other Thai women.

At the trial, the prosecution argued that the women were controlled by the accused who threatened them and their families with violence and with deportation to Thailand if they did not discharge their debts;⁷ a situation amounting to servitude within the meaning of s 270.66(2) *Criminal Code*. The victims did not receive any payment while they were under contract. Unlike many other trafficking cases, they were free to leave the brothels at any time as long as they continued to pay off their debt.

Although the two defendants in this case managed separate brothels and were charged with separate offences, they acted together in order to gain the sexual services of the trafficked women. Both were charged under s 270.6(2) *Criminal Code* (Cth) for conducting a business, namely a brothel, that involved the sexual servitude of persons while knowing about that servitude. Mr Sieders wife had also been arrested in Thailand for procuring persons to travel to Australia and work in their brothels.⁸

¹ *R v Sieders and Yotchomchin* [2006] NSWDC 184 at para [19].

² *R v Sieders and Yotchomchin* [2006] NSWDC 184 at para [21].

³ At the time of the trial in Australia, Ms Arpornrat was under arrest in Thailand for seeking to procure Thai nationals to travel to Australia: *ibid* at para [104].

⁴ The case has been referred to by the AFP as 'Operation Turquoise'; cf Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): Australian Institute of Criminology, 2008, 44–47.

⁵ *R v Sieders and Yotchomchin* [2006] NSWDC 184 at para [160].

⁶ *R v Sieders and Yotchomchin* [2006] NSWDC 184 at para [157].

⁷ *R v Sieders and Yotchomchin* [2006] NSWDC 184 at para [38].

⁸ *R v Sieders and Yotchomchin* [2006] NSWDC 184 at para [157].

Some of the victims involved in this case continued to work in the brothels voluntarily after their debts were paid back in full. A woman referred to as WS, for instance, stated that she accepted the debt as the cost for the opportunity to come to Australia to earn money. During her contract period she was required to earn between AUD 12,000 and 13,000 per month. At this rate she paid off her debt in three months. Afterwards she worked at a rate of AUD 8,000 and then AUD 2,000 per month. This money was sent back to her family in Thailand.⁹ A second woman, PN, reportedly also stayed on after paying off her debt over three months, working seven days a week earning about AUD 15,000–17,000 per month.¹⁰ Ms WP, a third woman, also stayed on after paying off her debt in two months and twenty days, earning around AUD 15,000 per month.¹¹ It was argued that all of the women involved were aware of the circumstances involved in the contract, and that they suffered no harm, mental or physical, from their time in Australia. The Court of Appeal later noted that:

It is a distinct possibility on the evidence that all the women except BB made a deliberate choice in Thailand to undertake the debt of \$45,000 [...]. It is a distinct possibility on the evidence that all the women except BB made this decision because they hoped that, once the debt had been repaid...they would have the prospect of earning considerably more than they could earn if they were in Thailand.¹²

The trial of both defendants commenced on June 27, 2006 and the jury returned verdicts of guilty within four weeks on July 21, 2006; the first convictions for offences involving sexual servitude. On December 8, 2006, both defendants were sentenced. Mr Sieders' actions were seen as involving a lesser degree of criminality, which is reflected in the sentence of four years, with a non parole period of two years.¹³ Ms Yotchomchin, the co-accused, sentenced to five years imprisonment, with a non-parole period of two and a half years.¹⁴

Both convictions were unsuccessfully appealed in May 2008. The New South Wales Court of Criminal Appeal dismissed the appeal on August 13, 2008.

Media Coverage

The arrest and conviction of Sieders and Yotchomchin was not widely reported in the media, but the case was later mentioned in articles detailing the history of trafficking convictions in Australia.¹⁵

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⁹ *R v Sieders and Yotchomchin* [2006] NSWDC 184 at paras [54]–[56].

¹⁰ *R v Sieders and Yotchomchin* [2006] NSWDC 184 at at para [64].

¹¹ *R v Sieders and Yotchomchin* [2006] NSWDC 184 at at para [66].

¹² *Sieders v R; Somsri v R* [2008] NSWCCA 187 at para [142].

¹³ *R v Sieders and Yotchomchin* [2006] NSWDC 184 at at para [157].

¹⁴ *R v Sieders and Yotchomchin* [2006] NSWDC 184 at at para [160].

¹⁵ Natalie O'Brien and Elisabeth Wynhausen, 'Use and abuse', *The Australian* (Sydney), 12 January 2005, 11; Natalie Craig, 'Sex slave victim wins abuse claim', *The Age* (Melbourne), 29 May 2007, 4.