IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 236

Magistrate's Appeal No 9884 of 2020

Between

Leck Kim Koon

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law] — [Offences] — [Property] — [Cheating]
[Criminal Procedure and Sentencing] — [Sentencing] — [Principles for reducing sentence on account of ill health]

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Leck Kim Koon
v
Public Prosecutor

[2021] SGHC 236

General Division of the High Court — Magistrate's Appeal No 9884 of 2020
Vincent Hoong J
30 June 2021

20 October 2021

Vincent Hoong J:

1 The appellant was tried and convicted in the court below on six charges of cheating under s 420 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"), for having used duplicate copies of the same transport document in order to obtain disbursements of funds from six banks. He was sentenced to a global sentence of 36 months' imprisonment by the court below. He appealed against his conviction and sentence. After considering the parties' submissions, I dismissed his appeals against conviction and sentence, and now give my reasons.

Facts

The agreed facts

2 At all material times, the appellant was a director of Intraluck Pte Ltd ("Intraluck"), along with one Madam Neo Poh Choo ("Mdm Neo"). The

appellant was also the majority shareholder of Intraluck, whose stated business was the importation and exportation of aluminium and related products.[1]

3 At that time, Intraluck had trade financing credit facilities with various banks,[2] whereby sums of monies under a pre-agreed credit facility would be disbursed to the relevant suppliers as indicated by Intraluck upon submission of an application form along with other documents. On the 9 September 2015, Intraluck had submitted an application to United Overseas Bank Ltd ("UOB") for clean invoice financing for the sum of US$60,415.51. This was supported by an arrival notice dated 28 August 2015 issued by Orient Overseas Container Line Limited, stating that Intraluck was to receive a shipment of aluminium products from Norinco New Energy Co Ltd under a bill of lading numbered "OOLU2564105080" ("BL080"). This application was approved and the funds were disbursed by UOB.[3]

4 Subsequently, between 10 and 15 September 2015, Intraluck submitted six other applications for invoice financing to various other banks other than UOB for various sums of money using the BL080 or an arrival notice referencing that same bill of lading ("AN080"). Three of the applications were signed by the appellant, and three were signed by the appellant and Mdm Neo. All the applications were approved by the various banks and the monies were disbursed to the suppliers under the relevant invoices.[4] It was not disputed that the financing of the invoices was secured by the personal guarantees given by the appellant, and all the outstanding payments in relation to the six proceeded

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1 Statement of Agreed Facts ("SOAF") at para 1.

2 SOAF at para 2.

3 SOAF at para 3.

4 SOAF at paras 4–6.

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charges were fully repaid by Intraluck, and that the banks did not suffer any losses.[5]

Summary of the parties' positions at trial

5 In the proceedings below, the Prosecution primarily sought to show that funds from each of the various banks were only disbursed in reliance of the application form which was submitted *together* with an invoice and documentary evidence that goods were being shipped (*ie*, BL080 or AN080). As BL080 was issued in relation to another of Intraluck's genuine import transactions which was already financed by UOB, there were in effect no actual goods separately exported to Singapore (*vis-à-vis* Intraluck) when Intraluck had used BL080 or AN080 to obtain financing from the six other banks. It was also the Prosecution's case that the appellant had been in control of the entire process of submitting the application forms together with either BL080 or AN080.[6]

6 In respect of the *actus reus*, the defence argued that there was no evidence that the appellant had submitted the applications for invoice financing with copies of BL080 or AN080, or that he had known or directed his staff to do so. The defence's position was that it was the administrative duty of his staff (namely one Ms Cheah Yin Li and/or Ms Nah Xin Ying) to prepare the documents for either himself or Mdm Neo to sign.[7] The defence further argued that there was no evidence that the banks had been indeed been deceived into delivering the monies stated in the invoices from the suppliers, as the specific officers processing the applications were not called or identified, and that the banks' terms and conditions did not require either BL080 or AN080 to be

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5 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [280(b)].

6 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [176]–[181].

7 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [182(a)].

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provided as evidence of shipment.[8] A key plank to the defence's arguments at trial was the alleged practice of transhipment described by the appellant, whereby suppliers would ship goods from one country to another via a third country without physically passing through Singapore, and as no transport documents were provided, the applications for financing would have been submitted without any transport documents attached nor would it have been required.[9] In respect of the *mens rea*, the defence's argument was quite simply that the appellant did not have the requisite knowledge that the submitted documentation was false.[10]

The decision below

Conviction

7 At the conclusion of the trial below, the District Judge ("DJ") found that the appellant had been the main decision maker at Intraluck and the person whom the banks recognised and negotiated with.[11] In this regard, the DJ found that the loan facilities extended to Intraluck by the banks required the provision of transport documents in the form of either BL080 or AN080,[12] and that the appellant had the knowledge of or had specifically agreed to the requirement that the transport documents be provided as part of the application process.[13] The appellant's attempts to argue that the requirement for the transport documents were a mere guideline, was contradicted by the oral and

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8 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [182(c)]–[182(d)].

9 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [115]–[120].

10 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [182(b)].

11 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [188].

12 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [193].

13 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [194] and [202].

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documentary evidence adduced in court,[14] in particular the fact that the appellant had certified true copies of the transport documents was consistent with the finding that the documents were required to obtain the funds disbursements from the banks.[15]

8 The DJ also found that the four statements recorded from the appellant pursuant to s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") were voluntarily made, and gave a detailed account of how the appellant went about directing the applications to the various banks in order to draw down on the facilities provided.[16] In the DJ's view, it was clear from the various statements that the appellant was the one who had chosen and included the transport documents in the applications, and had submitted or directed the applications appending those transport documents to be submitted to the banks.[17] While the appellant contended that the statements were inaccurately recorded, the DJ found that there was nothing objective to indicate otherwise, and that the necessary safeguards were in place to ensure the accuracy of the recording.[18]

9 The DJ further found that the appellant was aware that the banks would only grant a loan if they obtained a transport document, and being unable to produce a genuine transport document, the appellant had chosen to submit either BL080 or AN080 to banks.[19] These transport documents were in turn considered and relied upon by the banks as part of the approval process for the invoice

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14 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [197].

15 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [212]–[213].

16 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [214]–[216].

17 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [219].

18 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [226]–[230].

19 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [242].

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financing.[20] The DJ agreed with the Prosecution that the transport documents were an essential requirement for the application for invoice financing, the banks would have checked for this documents, the documents were indeed provided for, and the funds were accordingly disbursed.[21] As all the elements of the six charges were proven beyond a reasonable doubt, the appellant was convicted.[22]

Sentence

10 The DJ agreed with the Prosecution that the primary sentencing consideration was that of deterrence, in view of the need to safeguard the integrity of Singapore's financial services and reputation.[23] The DJ also agreed with the Prosecution that the large sums involved, extent of planning, clear profit motive, difficulty in detecting such schemes, and the lack of remorse, indicated that a substantial sentence was appropriate.[24]

11 Having considered the precedent cases, the DJ found that the appropriate starting sentence was a global sentence of about 42 months' imprisonment.[25] However, as the appellant was suffering from chronic myelomonocytic leukaemia ("CMML"), which is a rare form of blood cancer, the DJ turned to consider the guidelines set out by the High Court in *Chew Soo Chun v Public Prosecutor and another appeal* [2016] 2 SLR 78 ("*Chew Soo Chun*"), on considering the impact of ill health on sentencing. In the DJ's view, this was not

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20 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [248]–[249].

21 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [253].

22 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [269].

23 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [285].

24 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [286].

25 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [295].

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an appropriate case for the exercise of judicial mercy as the need for deterrence in the present case weighed in favour of punishment, that the present case was not an exceptional one, and the Singapore Prison Services ("SPS") had made it clear that it was able to adequately manage the appellant's medical condition.[26]

12 Notwithstanding, the DJ found that the appellant's medical condition was a mitigating factor as it was shown in the various medical reports that the appellant would have likely faced serious difficulties in incarceration, and the SPS had not definitively stated whether being imprisoned would cause disproportionate suffering to the appellant.[27] Accordingly, the DJ reduced the sentence by six months, and sentenced the appellant to a global sentence of 36 months' imprisonment.[28]

The parties' submissions on appeal

The appellant's case

13 First, the appellant argued that the bills of lading or arrival notices were not important to the obtaining of financing from the bank.[29] Second, that because the transactions would properly fall under misrepresentation (with its associated civil remedies), no criminal sanctions should lie against the appellant.[30] Third, that no loss was caused to the banks, who did not complain that they were deceived or Intraluck had acted fraudulently.[31] Fourth, that the

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26 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [309].

27 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [315].

28 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [316]–[317].

29 Appellant's Written Submissions at paras 61–62.

30 Appellant's Written Submissions at paras 65, 79–88.

31 Appellant's Written Submissions at paras 87–88.

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underlying transactions were in fact genuine.[32] Fifth, that there was also no evidence to show that the appellant had in fact physically attached the relevant transport documents to the applications to the banks.[33]

14 In respect of the element of *mens rea*, the appellant argued that the DJ had failed to critically analyse the various statements he had given to the police, and how the statements were inconsistent with the evidence of the Prosecution witnesses.[34]

15 With regards to the sentence, the appellant wholly adopted his counsel's submissions on sentence at the trial below, and asked for the court's exercise of judicial mercy in light of his medical and personal conditions.[35]

The Prosecution's case

16 In response to the appellant's voluminous written submissions, the Prosecution's submissions were relatively succinct. In respect of the appellant's statements, the Prosecution contended that the DJ had rightly accepted that these were accurately recorded, and that there was no reason to doubt the statement recorder, the procedural steps taken in recording the statement, as well as the fact that the statements were corroborated by the rest of the evidence.[36]

17 In respect of the appellant's contention that the banks did not require the transport documents and were not deceived by those documents, the Prosecution

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32 Appellant's Written Submissions at para 177.

33 Appellant's Written Submissions at para 202.

34 Appellant's Written Submissions at para 304.

35 Appellant's Written Submissions at para 591.

36 Respondent's Written Submissions at paras 38–41.

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submitted that the requirements for bills of lading or arrival notices were clearly laid out by the banks in the facility letters and application forms.[37]

18 In relation to the appellant's claims that he was not aware that the transport documents were submitted to the various banks, the Prosecution contended that this was contradicted by the statements he had given the police and his signatures on the various transport documents.[38]

19 With regards to the sentence, the Prosecution submitted that judicial mercy was not warranted as were significant public interest considerations at play,[39] and that the overall sentence imposed was not manifestly excessive.[40]

The appeal against conviction

Does civil liability preclude criminal liability

20 The offence of cheating under the Penal Code bears a significant overlap with fraudulent misrepresentation at common law. This was implicitly recognised by the Court of Appeal in *Tang Yoke Kheng (trading as Niklex Supply Co) v Lek Benedict and others* [2005] 3 SLR(R) 263:

> 10 … What is clear is that dishonesty is an element of fraud. A trial judge must find dishonesty if he is to adjudge that there has been fraud. The burden of proving fraud in a civil case lies with the party alleging it, but the infusion of a shared criminal element (fraud) in civil proceedings tends to create some uncertainty as to the standard of proof required. The degree of proof is not as stringently required as it would be in a

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37 Respondent's Written Submissions at paras 49–52.

38 Respondent's Written Submissions at paras 55–57.

39 Respondent's Written Submissions at paras 65–66.

40 Respondent's Written Submissions at para 70.

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> criminal case because it is accepted that the standard of proof in a civil case is that based on a balance of probabilities. …
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> …
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> 14 … There are, indisputably, only two standards of proof. For criminal cases, the standard is proof beyond reasonable doubt; for civil matters, the standard is that of a balance of probabilities, where, minimally, the party charged with the burden of proving will succeed if he can show just that little more evidence to tilt the balance. The prosecutor in a criminal case will have to furnish more evidence than just that little more to tilt the balance. So when fraud is the subject of a criminal trial, there is no difficulty appreciating what burden falls on the prosecutor. But since fraud can also be the subject of a civil claim, the civil standard of proving on a balance of probabilities must apply because there is no known "third standard" although such cases are usually known as "fraud in a civil case" as if alluding to a third standard of proof. However, because of the severity and potentially serious implications attaching to a fraud, even in a civil trial, judges are not normally satisfied by that little bit more evidence such as to tilt the "balance". They normally require more. …

21 Cheating and fraudulent misrepresentation both involve using some form of deception to convince another person into believing in something that was not true, in order to persuade that person to act to their detriment (or to the deceiving party's benefit) in some way. Both are underscored by the element of dishonesty, and can often found to arise from the same set of facts. It is thus abundantly clear that in situations such as the present case, there can be civil liability coupled with criminal liability. However, it is not the case that just because civil remedies are available, that criminal culpability would not arise. The reason is simply that civil liability engendered in fraudulent misrepresentation is not meant to address the same issues that the offence of cheating seeks to punish. The former is a private action meant to compensate the innocent party, while the latter goes towards punishing behaviour that is not considered acceptable by society. This difference in criminal and civil liability is also apparent from the different standards of proof required.

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22 As the learned authors of *Ratanlal & Dhirajlal: The Indian Penal Code* vol 2 (H K Sema & O P Garg eds) (LexisNexis, 34th Ed, 2018) have stated at p 2942, "[s]ometimes, the case may apparently look to be of a civil nature or may involve a commercial transaction but civil disputes or commercial disputes, in certain circumstances, may also contain ingredients of criminal offences and such disputes have to be entertained, notwithstanding, they are also civil disputes" (see also *Lee Kun Hee and others v State of Uttar Pradesh and others* (2012) 3 SCC 132 at [26]).

23 Accordingly, I found little merit in the appellant's argument that the availability of civil remedies precludes the finding of criminal liability.

Deceiving a corporate body

24 As stated in *Gunasegeran s/o Pavadaisamy v Public Prosecutor* [1997] 2 SLR(R) 946 ("*Gunasegeran*") at [40]–[44], the three elements comprising the offence of cheating punishable under s 420 of the Penal Code are that:

(a) Deception must have been practiced on the victim;

(b) There was inducement such that the victim delivered any property to any person; and

(c) There must be a dishonest or fraudulent intention on the part of the deceiving person to induce the victim to deliver the property.

25 Section 11 of the Penal Code states:

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> The word 'person' includes any company or association or body of persons, whether incorporated or not.

26 As the learned authors of Stanley Yeo, Neil Morgan and Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3rd Ed, 2018) at para 14.67 have observed, reading s 11 with s 415 of the Penal Code would mean that a corporate entity can be the victim of cheating even if no human agent was in fact deceived. A company (or corporate body), as a legal construct, can only act through its officers, and is more than the sum of its parts. For example, the officer who receives and processes the applications, may not be the same officer who approves the applications. While it cannot be said that any one officer was deceived into believing something that was not true, and had consequently acted upon that deception, the onus will be on the Prosecution to show that the acts taken by the offender were such as to induce an action on the part of the corporate body, either as part of its internal protocol or management processes. In my view, such an interpretation would give effect to s 415 read with s 11 of the Penal Code. I am reinforced in my conclusion, having had sight of the following recent amendment to s 415 of the Penal Code in 2019:

> Explanation 4.—A person that is a company or association or body of persons, whether incorporated or not, can be deceived for the purposes of this section, even though none of its individual officers, employees or agents is personally deceived.

Deception and inducement

27 "Deception" has been defined as the inducing of a person to believe to be true something which the person making the representation knows is in fact false (see *Gunasegeran* at [42]; *Public Prosecutor v Ong Eng Teck* [2012] SGHC 242 at [23]; *Rahj Kamal bin Abdullah v Public Prosecutor* [1997] 3 SLR(R) 227 at [24]).

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28 In the context of the deceiving a corporate body, as I have stated above at [26], where no particular human agent of the corporate body is identified, in order to show that the corporate body had "believed" the deception, it would be sufficient for the Prosecution to show that the corporate body's processes were utilised to induce that corporate body to act in a manner that it would not have acted if the "representation" was not made. In the present context, it had to be shown that the banks would not have disbursed the monies if the transport documents were not submitted to their officers as part of the applications submitted by Intraluck.

29 On the facts, it was clear from the evidence of the bank officers from all the banks involved that the transport documents were required as part of the banking facilities Intraluck had with the banks. This was corroborated by the fact that all the submitted application forms, which were signed by the appellant, appended transport documents in the form of either BL080 or AN080:

(a) P10 – Application submitted to Australia and New Zealand Banking Group Limited Singapore Branch ("ANZ"), which was the subject of the charge in DAC-943118-2017;[41]

(b) P13 – Application submitted to Development Bank of Singapore Limited ("DBS"), which was the subject of the charge in DAC-943114-2017;[42]

(c) P8 – Request for trade financing submitted to KBC Bank N.V. Singapore Branch ("KBC"), which was the subject of the charge in DAC-943115-2017;[43]

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41 Record of Proceedings ("ROP") p 2474.

42 ROP p 2482.

43 ROP p 2458.

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(d) P5 – Application submitted to Citibank N.A. Singapore Branch ("Citibank"), which was the subject of the charge in DAC-943116-2017;[44]

(e) P6 – Application submitted to Oversea-Chinese Banking Corporation Limited ("OCBC"), which was the subject of the charge in DAC-943117-2017;[45]

(f) P2 – Application submitted to The Hongkong and Shanghai Banking Corporation Limited Singapore Branch ("HSBC"), which was the subject of the charge in DAC-943156-2017.[46]

30 In my view, the transport documents BL080 or AN080 were documents which represented to the banks that the monies to be disbursed to the suppliers under the relevant invoices, were in relation to genuine trade transactions which did not in fact exist. Accordingly, the element of deception was clearly made out.

31 As to the second related element of whether the deception had in fact induced the various banks to act in a manner they would not have acted, I was of the view that the DJ had rightly concluded from both the oral and documentary evidence, that the banks had in fact been induced by the provision of the transport documents to disburse the monies to the suppliers under the relevant invoices.[47] As had been held by Yong Pung How CJ in *Seaward III Frederick Oliver v Public Prosecutor* [1994] 3 SLR(R) 89 ("*Seaward*") at [28], it is "immaterial that the false pretence was not the sole, operative reason …

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44 ROP p 2446.

45 ROP p 2451.

46 ROP p 2425.

47 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [260].

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[a]s long as the deception played some part in inducing [the banks] to approve the financing, the element of 'inducement' within s 415 would have been satisfied."

Dishonest intention

32 As to whether the element of dishonesty has been made out, reference must be had to s 24 of the Penal Code:

> Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing dishonestly.

33 This is to be read together with s 23 of the Penal Code:

> 'Wrongful gain' is gain by unlawful means of property to which the person gaining it is not legally entitled; 'wrongful loss' is loss by unlawful means of property to which the person losing it is legally entitled..

34 Wrongful loss would be established from the appellant's acts in obtaining financing from the various banks on the basis of transport documents, which was paid out to the various suppliers, if it can be shown that the appellant knew that the banks would not have agreed to release the monies to the suppliers under the relevant invoices if they had known that the transport documents were not made in relation to genuine transactions (see *Seaward* at [23]).

35 Central to the DJ's finding that the appellant possessed the requisite *mens rea* (*ie*, guilty knowledge) were the statements recorded from the appellant under s 22 of the CPC. In these proceedings, the appellant's attempts to impugn the statements can be summarised into the following bases:

(a) That the statements were inaccurate as the interviews with the appellant were in Mandarin, but the statements were recorded in

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English.[48] In addition, that there were gaps and procedural deficiencies in the statements;[49]

(b) That the DJ had misconstrued the statements.[50]

36 With regards to allegation (a), it was clear from the record that the appellant did not have any issues communicating with the investigation officer ("IO"). In fact, by the appellant's own account, the appellant understood himself to have cooperated well with the police.[51] As rightly observed by the DJ, the truth of the allegations premised on the perceived inaccuracies of language or whether the statement were (or were not) read back to the appellant (whether in English or Mandarin) ultimately turned on whether the IO or the appellant's evidence at trial was to be accepted. I was of the view that the DJ was justified in rejecting the appellant's allegations against the IO in the recording of the statements. As the DJ had rightly observed,[52] there was no cogent reason why the IO would have jeopardised his own career by going out of his way to incriminate the appellant, and if the IO was truly setting out to fabricate evidence against the appellant there was also no need for the IO to have recorded four separate statements from the appellant over the span of 51 days.

37 It was also clear that the appellant had signed on each page of the four statements, as well as next to all the amendments and warnings. When asked why he signed the statements, the appellant's own evidence was that he chose

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48 Appellant's Written Submissions at paras 335 and 443.

49 Appellant's Written Submissions at paras 505 and 506.

50 Appellant's Written Submissions at paras 482–516; Petition of Appeal at para 2(g).

51 ROP p 1674.

52 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [226].

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not to read it either because he was keen to contact his wife to get bailed out,[53] or that he was not told he had to read the statement before signing,[54] or that he was "very tired".[55] In my view, the DJ was justified in finding that the appellant, as "an astute and experienced businessman", would have known the significance of appending his signature to the statements. In totality, I was in agreement with the DJ that the s 22 of the CPC statements recorded from the appellant were accurate.

38 With regards to allegation (b), the appellant pointed to two specific questions in his submissions and argued that as the questions did not specifically identify either BL080 or AN080, the answers to the questions could not be used to incriminate the appellant.[56] Further, that the replies from the appellant were "one-word answer[s]" and completed in a short span of time, indicated that the answers were likely pre-typed, and alternatively that the answer "yes" was a mere acknowledgment and not a confession.[57] First, I made the observation that at the time the statements were recorded, the appellant was potentially facing over 500 charges, of which only six were proceeded with at trial.[58] The questions the appellant sought to impugn had to be seen in the greater context of the questioning he was being subjected to, and it cannot be said that the general questions which preceded the more specific ones to follow were irrelevant. Second, in view of the sheer number of charges the appellant was potentially liable to, and in the face of clear documentary evidence of the appellant's

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53 ROP p 1674.

54 ROP p 1710.

55 ROP p 1710.

56 Appellant's Written Submissions at paras 483–487.

57 Appellant's Written Submissions at paras 488–495.

58 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [6].

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conduct, it was clear that a simple answer "yes" was all that was necessary. Consequently, it was my view that the DJ had not been mistaken in understanding the four statements to indicate the appellant's knowledge as to the workings of Intraluck and how it had carried out its business and invoice financing activities.[59]

39 Following from my findings regarding the accuracy of the s 22 of the CPC statements, I agreed with the DJ that the appellant knew that the banks required copies of the transport documents which purported to represent genuine trade transactions in order for the funds to be disbursed, and had submitted BL080 or AN080 which were false representations of such trade transactions to the banks. It was also clear from the appellant's statement at P19,[60] and his evidence in court that he was the *only* person involved in the "sensitive business" of transhipment,[61] which was the purported reason for the use of the duplicate transport documents. The appellant also did not deny that as the managing director, he made all the decisions at Intraluck, including the decision on which bank to approach, and with which invoice.[62] As such, a dishonest intention on the part of the appellant was clearly established on the evidence, an intention which bore a clear nexus with the *actus reus* of cheating.

40 For completeness, that the appellant was not the actual person who performed the physical act of submitting the applications to the banks, in no way precluded the finding of guilt on his part. As I had found above, the appellant knew exactly what he was doing when he directed the applications to

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59 *Public Prosecutor v Leck Kim Koon* [2020] SGDC 292 at [230].

60 ROP p 2524.

61 ROP pp 1666–1667.

62 ROP pp 1835–1846.

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be made to the various banks, and he had taken the important step to sign and certify true the attached documents. The staff who faxed or sent the applications in were merely acting on his orders. Accordingly, I found no merit in this argument.

41 To recapitulate, I was satisfied that pursuant to s 420 of the Penal Code, the appellant had cheated the six banks into disbursing the monies to the various suppliers as indicated by Intraluck, and the appeal against conviction was dismissed.

The appeal against sentence

Global sentence

42 Applying the two-step analysis as set out in *Gan Chai Bee Anne v Public Prosecutor* [2019] 4 SLR 838 ("*Anne Gan*") at [19], I first turn to consider if the individual sentences meted out by the DJ were manifestly excessive. In this regard, I was in broad agreement with the DJ that the primary sentencing consideration was that of general deterrence, and the underlying need to protect the integrity and reputation of Singapore's financial services. In my view, the DJ had correctly considered the relevant offence-specific factors, which were:

(a) The large sum of monies involved in the six charges, totalled up to US$622,783.95;

(b) The extent of planning involved in arranging the various applications. In addition to the DJ's findings, I also noted that six different invoices were submitted in the various applications which appended the same underlying transport document found in BL080;

(c) The clear profit-driven motive of the appellant;

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(d) The difficulty in detecting the entire scheme. In particular, I noted that the appellant did not deny that he was the only person at Intraluck who knew of the purported transhipment transactions which gave rise to the need for Intraluck to falsely represent to the banks that there were actual goods entering Singapore.[63]

43 In addition, while Intraluck did eventually pay back all the monies disbursed by the banks in consequence of the acts of cheating, it was entirely fortuitous that no loss was in fact suffered by the various banks. If any of the purported transhipment transactions had fallen through, the banks would have found themselves in a difficult position of having no actual goods to turn to recoup their losses if the appellant himself did not have sufficient funds to pay them.

44 Bearing in mind the sums involved and the fact that no actual loss was caused to the banks, the DJ's starting point of 12 months' imprisonment in respect of each of the five charges involving amounts less than US$100,000, was not manifestly excessive. The indicative sentence of 18 months' imprisonment in respect of the charge involving an amount of US$162,673.44 also cannot be said to have been manifestly excessive.

45 I turned next to consider the overall sentence, with due regard to the one-transaction rule and the totality principle (see *Anne Gan* at [18]). As the charges involved separate incidents involving separate banks, the DJ's decision to run three of the sentences consecutively did not contravene the one-transaction rule. The starting aggregate sentence of 42 months' imprisonment was also broadly

63 ROP pp 1666–1667.

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consistent with the relevant case precedents, and would be proportionate to the entirety of the criminal behaviour in the present case.

46 While the framework set out in *Anne Gan* does not specifically provide for the consideration of ill health as an offender-specific factor, the court in *Chew Soo Chun* appeared to implicitly accept that ill health can be a reason for the court to further downward adjust the sentence to take into account an offender's condition where it would cause undue hardship to the offender in the event that he is incarcerated. In my view, and bearing in mind the observations in *Chew Soo Chun* at [44] that judicial mercy is not consistent with the principle of proportionality, this would logically be an exercise that is taken over and above the *Anne Gan* framework.

Applicability of the appellant's ill health

47 As stated by the three judge coram of the High Court *in Chew Soo Chun* at [38]:

> In summary, ill health is relevant to sentencing in two ways. First, it is a ground for the exercise of judicial mercy. Judicial mercy is an exceptional recourse available for truly exceptional cases and which will likely result in an exceptional sentence. Where mercy is exercised, the court is compelled by humanitarian considerations arising from the exceptional circumstances to order the minimum imprisonment term or a non-custodial sentence where appropriate. Secondly, it exists as a mitigating factor. The cases where ill health will be regarded as a mitigating factor include those which do not fall within the realm of the exceptional but involve markedly disproportionate impact of an imprisonment term on an offender by reason of his ill health. The court takes into account the fact that ill health may render an imprisonment term that will not otherwise be crushing to one offender but may be so to another, and attenuates the sentence accordingly for the latter

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> offender so that it will not be disproportionate to his culpability and physical condition.

48 In determining which category of relevance to sentencing an offender's ill health would fall into, the court necessarily should look into the evidence of the offender's ill health (if any), as well as the ability of the prison authorities to address the offender's health needs. On the facts, the evidence of the appellant's medical condition was not disputed, and I accepted that the offender's ill health (*ie*, CMML) was a relevant issue for consideration in sentencing. However, as noted by the DJ, the prison authorities were also prepared to offer an adequate system of healthcare to manage the appellant's medical condition.[64]

49 Turning first to consider whether judicial mercy should be exercised, I was in agreement with the DJ that there were significant countervailing public interest considerations which favoured punishment, in view of the extent of cheating carried out by the appellant and the sums of money involved. While the appellant does suffer from a terminal illness, as stated by the Court of Appeal in *VDZ v VEA* [2020] 2 SLR 858 at [70], "myriad considerations must be factored into each sentencing equation as and when it arises for evaluation, with judicial mercy only being granted in limited and exceptional circumstances." Accordingly, it was also my view, that the present case was not one in which judicial mercy ought to be exercised.

50 Next, I turn to consider if the appellant's ill health was a relevant mitigating factor. As set out by the court in *Chew Soo Chun* at [30]–[33], ill health can have a mitigating effect on a sentence by directly decreasing the culpability of the offender, or by causing imprisonment to have a

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64 ROP pp 3199–3201.

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disproportionate impact on the offender. Similar to *Chew Soo Chun*, the present case was more concerned with the latter effect, and the question was whether the appellant faced far greater suffering than the usual hardship in serving a term of imprisonment. In my view, the DJ was justified in finding that it was likely that imprisonment would have a disproportionate impact on the appellant. To be clear, the prison authorities had specifically declined to comment on this. The reduction of six months' imprisonment afforded to the appellant was entirely appropriate on the facts, as well as broadly consonant with the similar factual matrix found in *Chew Soo Chun*. All things considered, the final sentence of 36 months' imprisonment could not be said to be manifestly excessive. I therefore dismissed the appeal against sentence.

Conclusion

51 In summary, it was clear from the evidence in the record of proceedings that the elements of the offence of cheating were proven beyond reasonable doubt, and that the DJ had rightly considered the appropriate aggravating and mitigating factors in coming to a global sentence of 36 months' imprisonment. I therefore dismissed both the appeals against conviction and sentence.

Vincent Hoong
Judge of the High Court

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Letchamanan Devadason and Ivan Lee Tze Chuen (LegalStandard LLP) for the appellant;
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