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

[2021] SGHC 57

Magistrate's Appeal No 9011 of 2020/01

Between

Raj Kumar s/o Brisa Besnath

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Offences] — [Property] — [Criminal breach of trust]
[Criminal Law] — [Elements of crime] — [Actus Reus] — [Whether identity of party entrusting property to the accused must be established]
[Criminal Law] — [Elements of crime] — [Actus Reus] — [Whether the party entrusting property to the accused must be the legal owner of the property]

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v
Public Prosecutor

[2021] SGHC 57

General Division of the High Court — Magistrate's Appeal No 9011 of 2020/01
Vincent Hoong J
27 January 2021

15 March 2021 Judgment reserved.

Vincent Hoong J:

1 In the court below, the accused claimed trial to a charge of criminal breach of trust ("CBT") under s 406 of the Penal Code (Cap 224, 2008 Rev Ed) involving the dishonest misappropriation of $81,000. The District Judge ("DJ") convicted the accused and sentenced him to 13 months' imprisonment.[1] The DJ's grounds of decision are reported as *Public Prosecutor v Raj Kumar s/o Brisa Besnath* [2020] SGDC 95 ("GD"). The accused is now appealing against his conviction and sentence. For the purposes of this judgment, the accused shall be referred to as "the appellant".

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1 Record of Proceedings ("ROP") at p 340 (GD at [1]).

2 Under s 405 of the Penal Code, an accused person must have been "*entrusted* with property, or with any dominion over property" [emphasis added]. This appeal raises an interesting question of whether the true identity of the party entrusting the appellant with the property in question ("the entrusting party"), *ie*, $81,000 must be ascertained in order to establish the element of entrustment in an offence of CBT. In the court below, the DJ answered in the negative. A secondary issue is whether the entrusting party must have legal ownership of the property entrusted.

Facts

3 Sometime in 2012, while using an online platform which he referred to as an "adult finder", the appellant came across a persona called "Maria Lloyd" ("Maria").[2] The respondent accepts that Maria's actual identity remains unknown.[3] The appellant and Maria began chatting via email.[4] Subsequently, the appellant agreed to receive $89,000 on Maria's behalf in Singapore and to hand it over to a man in Malaysia.[5] The appellant was informed by Maria that someone would call him and pass him the money.[6] About two days later, the appellant received a phone call from a lady named Melody Choong ("Melody"), who told him that she would be passing the money to him.[7]

4 As to the provenance of the money that the appellant eventually received, Melody herself was acting on the instructions of an online persona

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2 ROP at p 227, line 1–12.

3 Respondent's Submissions ("RS") at [2].

4 ROP at p 227, line 6–28.

5 ROP at p 253, line 23–29.

6 ROP at p 252, line 21–30; ROP at p 341 (GD at [4(a)]).

7 ROP at p 235, line 32 to p 236 at line 21; ROP at p 341 (GD at [4(a)]).

known as "Jacques".[8] Jacques had arranged for Melody to meet one Sie Ming Jeong ("Sie"). On 8 March 2013, Sie received $83,578.50 into his bank account from another online persona known as "Maureen Othman" ("Maureen").[9] On Maureen's instructions, Sie withdrew $82,000 in cash to give to Melody.[10] Later that day, Sie and Melody met at Mount Elizabeth Hospital ("the Hospital"), where Sie was working.[11] In a visitor's lounge within the Hospital, Sie handed Melody an envelope containing cash amounting to $82,000, in thousand-dollar notes.[12] Melody counted the money before leaving the Hospital.[13]

5 Pursuant to their arrangement over the phone, the appellant and Melody met at the NEX shopping mall in Serangoon on 9 March 2013.[14] There, the appellant received an envelope containing $81,000 from Melody.[15] When contacted by Melody on 10 March 2013, the appellant informed her that he "[had] a problem in checkpoint [*sic*]" and was "coming on bail soon when [his] Friend bail [him] out …".[16] However, the appellant did not subsequently bring the money to Malaysia as instructed by Maria and pocketed it for himself.[17]

6 Based on these facts, the appellant was charged as follows:[18]

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8 ROP at p 65, line 8–13.

9 ROP at p 27, line 20–29.

10 ROP at p 25, line 1–6; p 30, line 31–32; p 31, line 20–24; p 32, line 4–11.

11 ROP at p 21, line 3–4; p 56, line 1–4; p 65 line 17–23.

12 ROP at p 25, line 29; p 66, line 10–12; p 115, line 4–7.

13 ROP at p 66, line 13–14.

14 ROP at p 47, line 11–18.

15 ROP at pp 362, 364 (GD at [49], [55]).

16 ROP at p 396; ROP at p 272, line 20–32; ROP at p 342 (GD at [4(f)]).

17 ROP at p 371 (GD at [71]–[72]).

18 ROP at p 5.

> You, Raj Kumar s/o Brisa Besnath, are charged that you on or about 9 March 2013, in Singapore, being entrusted with property by one 'Maria Lloyd', *to wit*, cash of SGD 81,000, did commit criminal breach of trust, by dishonestly misappropriating the said property, and you have thereby committed an offence punishable under section 406 of the Penal Code (Cap 224, 2008 Rev Ed).

Decision below

Factual issues

7 In the court below, the main factual issues were: (i) whether the appellant had received $81,000 from Melody; and (ii) whether the appellant was entrusted with the said sum by Maria.[19]

8 In relation to whether the appellant had received $81,000 from Melody, the DJ answered this in the affirmative. The DJ reached this finding primarily on the basis of Melody's evidence that she had handed over an envelope containing $81,000 to the appellant.[20] The appellant's defence – that the envelope received from Melody contained blank pieces of paper – was rejected as it was inconsistent with the impression he gave to Maria and Melody that he received the money and was facing issues crossing the border into Malaysia.[21]

9 On the issue of entrustment, the DJ was satisfied that Maria had entrusted the $81,000 to the appellant. The e-mails exchanged between the appellant and Maria in Exhibit P7 showed that Maria had trusted the appellant to handle the money according to her instructions.[22] The appellant had also repeatedly affirmed in court that he understood that the money he was to receive

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19 ROP at p 362 (GD at [49]).

20 ROP at pp 364, 366 (GD at [55] and [60]).

21 ROP at p 364 (GD at [56]).

22 ROP at p 368 (GD at [64]).

from Melody belonged to Maria and that he was to take the money to Malaysia as per Maria's instructions.[23]

Legal issues

10 The DJ considered the very issue that arises before me – whether the actual identity of the entrusting party (*ie*, Maria Lloyd) must be ascertained – and concluded that on a plain reading of s 405 of the Penal Code, the entrusting party's true identity was not an element of the offence.[24]

11 In support of her conclusion, the DJ cited two cases. The first case was *Som Narth Puri v State of Rajasthan* 1972 AIR 1490 ("*Som Narth Puri*"), from which the DJ derived the proposition that "for the element of entrustment to be made out, what was essential was that the ownership or beneficial interest in the property alleged to have been entrusted must be *in some person other than the accused*" [emphasis in original].[25] The DJ also regarded *Pittis Stavros v Public Prosecutor* [2015] 3 SLR 181 ("*Pittis Stavros*") as fortifying her position, as See Kee Oon JC (as he then was) at [45] was willing to delete the identity of the entrusting party from a charge for an offence under s 408 of the Penal Code. For the avoidance of doubt, the charge in *Pittis Stavros* was subsequently downgraded to one concerning s 406 of the Penal Code.

12 To illustrate that the identity of the entrusting party was unnecessary for an offence of CBT to be established, the DJ provided the following example of an online fundraiser ("the online fundraiser example"):[26]

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23 ROP at p 368 (GD at [64]).

24 ROP at p 381 (GD at [95]).

25 ROP at p 379 (GD at [92]).

26 ROP at p 380 (GD at [93]).

> To further illustrate the point, suppose a fundraiser created an online crowd-funding campaign to raise funds for a certain purpose or cause (e.g. medical or legal fees). The funds might be collected on the online crowd-funding platform itself, or through a special bank account set up specifically for the funds to be held. Over time, various sums of monies might be collected online or transferred into the special bank account by anonymous donors who were unidentified or chose not to be identified. However, one would agree that even if these donors could not be identified, there was nevertheless an entrustment of monies to the fundraiser. There was no rational basis to find that entrustment could not be made out simply because the donors chose to remain anonymous, or that no records of the donors' particulars were kept. Monies were given and collected for a specific cause or purpose as stated by the fundraiser, and if they were to be subsequently dishonestly misappropriated, that would, in my view, constitute an offence of CBT.

13 The other legal issue which the DJ considered was whether the entrusting party must have legal ownership of the property entrusted. The DJ answered this question in the negative, and held that it was sufficient for the entrusting party to have some right (including a bare possessory right) which was then conferred on the accused person.[27] She similarly reached this conclusion on the basis that the plain wording of s 405 of the Penal Code did not require the entrusting party to be the legal owner of the entrusted property.[28] The High Court in *Pittis Stavros* (at [41]–[42]) had also held that there was no requirement for the property entrusted to be legally owned by the entrusting party, and the DJ rightly regarded herself as bound by this authority.[29]

14 Further, for completeness, the DJ also referred to *R v Tan Ah Seng* [1935] MLJ 273 for the proposition that the scope of entrustment is "broad enough to cover cases where the accused received the property in the course of

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27 ROP at pp 377–378 (GD at [88]).

28 ROP at p 375 (GD at [83]).

29 ROP at pp 375–376 (GD at [84]).

an illegal transaction."[30] Accordingly, even if the $81,000 transferred to the appellant was stolen or illegal (*eg*, represented the proceeds of a crime), the appellant could nevertheless be entrusted with the money within the meaning of s 405 of the Penal Code.[31]

The parties' cases on appeal

Appellant's submissions

15 While the appellant appealed against both his conviction and sentence, his counsel only made submissions at the hearing of the appeal against his conviction. The appellant challenges his conviction by arguing that there can be no "entrustment" under s 405 of the Penal Code unless the relationship of trust ("the trust relationship") is "legitimate or genuine".[32] In other words, where a trust relationship is created as a result of the entrusting party's fraud and deceit, no "valid or legally recognisable" trust relationship is created.[33] For the avoidance of doubt, the appellant's case is separate and distinct from the issue of whether an entrustment for an illegal purpose, or based on an underlying illegal transaction, is recognised under s 405 of the Penal Code.[34]

16 The appellant advances four reasons for requiring the trust relationship under s 405 of the Penal Code to be "legitimate or genuine":

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30 ROP at p 377 (GD at [87]).

31 ROP at pp 377–378 (GD at [88]).

32 Appellant's Skeletal Arguments ("ASA") at [13].

33 ASA at [15].

34 ASA at [14], [50]–[51].

(a) Conceptually, there cannot be a betrayal of trust when the trust relationship itself is not real, but instead imaginary, fictitious or fictional.

(b) As a matter of principle, the law ought not to recognise an imaginary, fictitious or fictional trust relationship as this would run contrary to the very object and purpose of CBT.

(c) The illustrations in Section 405 of the Penal Code suggest the exclusion of imaginary, fictitious or fictional trusts from being the subject-matter of a CBT offence.

(d) The law of property rights in civil law does not recognise a fictitious, imaginary or fictional trust.

17 The appellant contends that in the present case, given Maria is a fictional character that was invented to "deceive and defraud" persons including the appellant, any trust relationship between the appellant and Maria is void *ab initio* and no offence is committed under s 406 of the Penal Code.[35]

Respondent's submissions

18 The respondent's submissions canvass a broad range of factual and legal issues which were raised in the appellant's Petition of Appeal.[36] However, given that the appellant has confined the scope of the appeal in his written and oral submissions, I have summarised below only the relevant portions of the respondent's submissions.

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35 ASA at [38]–[39].

36 ROP at pp 8–13.

19 First, the respondent submits that the identity of the entrusting party is not an element of the offence under s 406 of the Penal Code. Recognising the entrusting party's identity to be an element of the offence of CBT would result in an absurd outcome where offenders are permitted to escape criminal liability solely because the source of the entrusted property cannot be traced to a specific person. Such an outcome cannot have been intended by parliament.[37] Instead, if an accused person receives property from a third party on the latter's instructions to deal with the property in a particular manner, entrustment under s 405 is made out; whether the identity of the third party was portrayed fictitiously to the accused person or not is irrelevant.[38]

20 Second, the respondent submits that the property in question need not be legally owned by the entrusting party. However, the entrusting party must have *some* sort of right to the property; a mere possessory right would suffice.[39] The respondent also maintains that Maria was able to enjoy rights in relation to property, including possessory rights, despite her actual identity being unknown.[40]

Issues to be determined

21 From the parties' cases on appeal, two legal issues arise for my determination:

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37 RS at [107].

38 RS at [110].

39 RS at [97]–[98].

40 RS at [97]–[99].

(a) Whether s 405 of the Penal Code requires the actual identity of the entrusting party to be ascertained in order for the element of entrustment to be made out.

(b) Whether s 405 of the Penal Code requires the entrusting party to be the legal owner of the property entrusted.

Issue 1: The necessity of proving the actual identity of the entrusting party

22 Whether the actual identity of the entrusting party is an element of the offence of CBT is a matter of statutory interpretation. The offence of CBT is defined in s 405 of the Penal Code as follows:

> **Criminal breach of trust**
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> 405. Whoever, being in any manner *entrusted with property, or with any dominion over property*, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or intentionally suffers any other person to do so, commits "criminal breach of trust".
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> [emphasis added]

23 It is trite that statutory interpretation is a purposive endeavour, in that an interpretation that would promote the purpose or object underlying the written law must be preferred to an interpretation that would not do so: s 9A(1) Interpretation Act (Cap 1, 2002 Rev Ed) ("Interpretation Act"). In this regard, I am guided by the three-step approach to purposive statutory interpretation set out in *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 at [59]:

> It follows from this that the court's task when undertaking a purposive interpretation of a legislative text should begin with three steps:
>
> > (a) First, ascertaining the possible interpretations of the text, as it has been enacted. This however should never be done by examining the provision in question in isolation. Rather, it should be undertaken having due regard to the context of that text within the written law as a whole.
> >
> > (b) Second, ascertaining the legislative purpose or object of the statute. This may be discerned from the language used in the enactment; but as I demonstrate below, it can also be discerned by resorting to extraneous material in certain circumstances. In this regard, the court should principally consider the general legislative purpose of the enactment by reference to any mischief that Parliament was seeking to address by it. In addition, the court should be mindful of the possibility that the specific provision that is being interpreted may have been enacted by reason of some specific mischief or object that may be distinct from, but not inconsistent with, the general legislative purpose underlying the written law as a whole. I elaborate on this in the following two paragraphs.
> >
> > (c) Third, comparing the possible interpretations of the text against the purposes or objects of the statute. Where the purpose of the provision in question as discerned from the language used in the enactment clearly supports one interpretation, reference to extraneous materials may be had for a limited function – to confirm but not to alter the ordinary meaning of the provision as purposively ascertained; but I elaborate on this in the following section.

Ordinary meanings of "entrusted"

24 On a preliminary note, "entrusted" in s 405 of the Penal Code is not necessarily a term of law and it may therefore take on different meanings in different contexts: *Gopalakrishnan Vanitha v Public Prosecutor* [1999] 3 SLR(R) 310 ("*Gopalakrishnan*") at [20].

25 The following are two possible interpretations of "entrusted" for the purpose of Issue 1.

26 The appellant argues that "entrusted" requires the identity of the entrusting party be established and known to the accused ("the narrow view"). The basis for such a requirement is that a trust which is created as a result of the entrusting party's "fraud and deceit, particularly if the deceit touches on the trustor's own identity", is neither legitimate nor genuine. Consequently, no "valid or legally recognisable trust" is created.[41]

27 The broader view, which the DJ and the respondent advance, is that "entrusted" refers to the transference of possession of property, or some proprietary interest therein, for *some purpose* ("the broad view").[42] On this view, the focus of the element of entrustment is whether the manner and the circumstances in which possession, or some other proprietary interest, was transferred to the accused disclose an identifiable purpose for the said transfer which the accused then dishonestly violates.[43] This does not require ascertaining the actual identity of the entrusting party.

Legislative purpose of s 405 of the Penal Code

28 To determine which interpretation of "entrusted" is to be preferred, I will focus on discerning the specific purpose behind s 405 of the Penal Code. In doing so, *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [42] makes clear that courts may have regard to: (i) the text of the

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41 ASA at [15].

42 ROP at p 372 (GD at [76]); RS at [78]–[81], [103].

43 ROP at p 378 (GD at [89]).

relevant legislative provision and its statutory context; and (ii) extraneous material, subject to the guidance in ss 9A(2) and 9A(3) of the Interpretation Act.

29 I turn first to examine the text of s 405 of the Penal Code. From the elements of CBT disclosed in s 405, it becomes clear that its object is to criminalise the dishonest abuse of trust reposed in a person in relation to property. Crucially, the accused must be "entrusted with property, or with any dominion over property", but subsequently deals with the property in a dishonest manner. It is this knowing or intentional betrayal of an initial trust placed in the accused person which the law does not condone.

30 The High Court's remarks in *Public Prosecutor v Lam Leng Hung and other appeals* [2017] 4 SLR 474 ("*Lam Leng Hung*") at [71] are instructive for confirming the purpose or object of CBT offences in the Penal Code:

> It is therefore clear that the conduct which the offence of CBT prohibits is a situation where a person who lawfully possesses property belonging to another, in breach of directions or without authorisation, dishonestly misappropriates, converts to his own use, uses or disposes of that property. In other words, the purpose of an offence of CBT is to criminalise a *dishonest betrayal of original trust.*
>
> [emphasis added]

31 I surmise that the High Court in *Lam Leng Hung* likewise based its foregoing observation on the text of the provisions relating to CBT in the Penal Code, *ie*, ss 405–409. In that case, various authorities were also taken into account, including Yong Pung How CJ's statement in *Hon Chi Wan Colman v Public Prosecutor* [2002] 2 SLR(R) 821 at [54] that "the essence of the offence [of CBT] lies in the entrustment of property to an employee and his subsequent betrayal of that trust".

Legislative history of s 405 of the Penal Code

32 I now turn to the extraneous material on the legislative history and background to s 405 of the Penal Code. While parties did not address me on the legislative history of s 405 of the Penal Code, such extraneous material may further elucidate the provision's purpose or object.

33 The salient points on the legislative history of s 405 are as follows. s 405 of the Penal Code was first enacted as a provision within the Indian Penal Code in 1860 ("the 1860 IPC"), which was thereafter brought into force in Singapore by the Legislative Council of the Straits Settlements in 1872 as Ordinance 4 of 1871 (Andrew Phang Boon Leong, *The Development of Singapore Law: Historical and Socio-legal Perspectives* (Butterworths, 1990) at p 180). As the current wording of s 405 of the Penal Code is *in pari materia* with s 405 of the 1860 IPC, materials which illuminate the object and purpose of the latter are relevant to my decision. For reference, I set out the wording of s 405 of the 1860 IPC (Sir Walter Morgan and Arthur George Macpherson, *The Indian Penal Code (Act XLV of 1860): with Notes* (G. C. Hay, 1863) at p 365):

> Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

34 While the 1860 IPC was being drafted, a similar codification effort of the criminal law was underway in England. The Commissioners on the Criminal Law of England ("the ELC") released reports in 1839 and 1843 containing a draft digest of proposed criminal laws ("the Digest") (*Ho Man Yuk v Public Prosecutor* [2019] 1 SLR 567 ("*Ho Man Yuk*") at [78(c)]). The Digest was never

enacted into law. However, the Law Commission of India tasked with drafting the 1860 IPC ("the ILC"), was asked to review the draft IPC against the Digest in 1846 (*Ho Man Yuk* at [78(d)]). Accordingly, in 1847, the ILC noted that the offence of "criminal breach of trust" in the draft IPC was the equivalent of "embezzlement" in the Digest (Indian Law Commission, *Copies of the Special Reports of the Indian Law Commissioners* (East India House, 19 November 1847) ("ILC 1847 Report") at [553]). As such, materials which flesh out the scope of "embezzlement" in the Digest are relevant to the inquiry before me. For reference, I set out the Digest's definition of the offence of embezzlement (Seventh Report of Her Majesty's Commissioners on Criminal Law (Her Majesty's Stationery Office, 1843) at p 257, Section 6 Art 1):

> Whosoever, being intrusted with the possession of any moveable property or fixture, being of the property of any other person, on any contract of hiring, or as a deposit, pledge or security, or for the purpose of keeping, carrying or repairing, or other purpose whatsoever, under an obligation to return, deliver up, or specifically apply the same, shall, with intent to defraud the owner, and in violation of such trust, embezzle such property or fixture, or any part thereof, shall incur the penalties of the 26th class; (*a*) and in case the value of the property or fixture so embezzled shall amount to the sum of 1*l.*, shall incur the penalties of the 17th class.

35 In particular, I find that the materials from the ILC and ELC speak with one voice: the object of the offence of criminal breach of trust and embezzlement is to punish persons who *dishonestly* abuse a trust reposed in them. The ILC, in 1847, said that CBT is "committed by a person who *intending fraudulently* to cause wrongful loss, or risk of wrongful loss, to *any* party for whom he is in trust…" [emphasis added] (ILC 1847 Report at [556]). The ELC said, in respect of embezzlement, that "the object of [embezzlement] is to punish carriers, and others, in respect of actual *fraudulent* appropriations, where the offenders, by reason of distinct possession, are not guilty of theft in taking the property" [emphasis added] (Seventh Report of Her Majesty's Commissioners

on Criminal Law (Her Majesty's Stationery Office, 1843) at p 257, Section 6 Art 1 Notes). No mention was made of the need to prove the identity of the entrusting party or the victim of embezzlement.

36 As such, the views of the ILC and ELC support my articulation of the object of s 405 (at [29] above), which I derived from the text of the provision itself. The gravamen of CBT and embezzlement, in the IPC and Digest respectively, is the accused person's dishonesty in betraying the terms of entrustment.

37 For completeness, I note that neither the ILC's "Notes on the Indian Penal Code" in 1837 (see Thomas Babington Macaulay, *The Works of Lord Macaulay: Speeches – Poems & Miscellaneous*, vol II (Longmans Green & Co, Albany Edition, 1898) at pp 144–167), nor the Third Report of the ELC (Her Majesty's Stationery Office, 1847) at p 24, which dealt with offences relating to "Fraudulent Appropriations" (at p 7), required the identity of the entrusting party to be proven for the offence of CBT or embezzlement. Finally, while the ILC, then led by Sir Barnes Peacock, published a final report on the draft IPC in 1856, there does not appear to be a surviving copy of this report (*Ho Man Yuk* at [78(e)]).

Broad or narrow view?

38 It bears emphasising that the interpretation which furthers the purpose of the written text should be preferred over the interpretation which does not (*Tan Cheng Bock* at [54(c)]).

39 For the following reasons, I find that the broad view adopted by the DJ and the respondent better furthers the purpose of s 405 of the Penal Code.

40 First, the appellant's narrow interpretation does not comport with the plain language of s 405. It is trite that there are limits to the purposive interpretation of statutes, as described in unequivocal terms in *Nation Fittings (M) Sdn Bhd v Oystertec plc and another suit* [2006] 1 SLR(R) 712 at [27]:

> I should reiterate that the court's interpretation should be consistent with, and *should not either add to or take away from*, or stretch unreasonably, the literal language of the statutory provision concerned. In other words, the literal statutory language constitutes the broad framework within which the purpose and intent of the provision concerned is achieved. It is imperative, to underscore the point just made, that this framework is not distorted as the ends do not justify the means. Where, for example, it is crystal clear that the statutory language utilised does not capture the true intention and meaning of the provision concerned, any reform cannot come from "legal gymnastics" on the part of the court but, rather, must come from the Legislature itself.
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> [emphasis added]

41 However, from the plain language of s 405, the identity of the entrusting party is not an element of the offence. Further, it is a rule of statutory construction that "[p]arliament shuns tautology and does not legislate in vain". Courts should therefore "endeavour to give significance to every word in an enactment" (*Tan Cheng Bock* at [38]). I am therefore of the view that the words "in any manner" preceding the word "entrusted" support a wide reading of entrustment. With this in mind, it becomes clear that the appellant's suggestion for the identity of the entrusting party to form an element of CBT is an unprincipled addition to literal language of s 405 of the Penal Code.

42 This leads me to my second reason for preferring the broad view. I regard adding the ingredient of proving the identity of the entrusting party as an unreasonable and unprincipled stretch on the language of s 405 because it stifles, rather than promotes, the object of s 405 of the Penal Code. Namely, bearing in mind the object of s 405 (see [29] above) I am satisfied that a person can be

entrusted with property, within the meaning of s 405, even if she/he has been deceived as to the true identity of the entrusting party. In my view, entrustment is established if the appellant received possession of the property with the knowledge that: (i) the entrusting party had, at least, possessory rights to the property; and (ii) that he was to deal with the property in the manner instructed by the entrusting party ("the terms of the entrustment"). Even if the appellant was misled as to the entrusting party's true identity, I fail to see how this renders the foundations of the entrustment, *viz*, the terms of the entrustment and the appellant's knowledge of such terms, "imaginary" or "fictious". For instance, in the DJ's online fundraiser example (see [12] above), just because donors choose to remain anonymous does not render the terms of the entrustment illusory. The fundraiser has still received monies on the promise to donors that their donations will be applied for a specific cause or purpose. In these premises, the anonymous donors have entrusted their moneys to the fundraiser within the meaning of s 405 of the Penal Code.

43 The corollary of an accused person's cognisance of the terms of the entrustment is that once he deals with the property inconsistently with said terms, he has acted dishonestly by: (i) doing an act "*with the intention of causing wrongful gain to* [himself] or another person, or wrongful loss to another person, regardless of whether such gain or loss is temporary or permanent"; or (ii) doing an act which is dishonest "by the ordinary standards of reasonable and honest persons and [knowing] that that act is dishonest by such standards" (s 24 of the Penal Code). A finding of such dishonesty is not predicated on the appellant knowing the true identity of the entrusting party. Accordingly, it would promote the object of s 405 (see [29] above) to adopt the broad view.

44 Contrastingly, adopting the narrow view undermines the object of s 405. Regardless of whether the true identity of the entrusting party is proven, an

accused person may dishonestly contravene the terms of the entrustment and perform the very mischief which s 405 of the Penal Code legislates against. The narrow view is an unjustified fetter on the scope of s 405.

45 The appellant contends that the narrow view avoids "the absurd conclusion of the law validating the trustor's fraud, while in the same breath, condemning the trustee's breach of trust".[44] With respect, I am unable to agree with this argument for the following reasons.

46 The broad view does not condone or validate the trustor's fraud. Assume that a thief, who conceals his identity, and the accused entered into an agreement for the latter to deliver a stolen artefact to the thief's associate. The accused person subsequently applies the stolen artefact for his personal use. Under the broad view, the elements of entrustment are made out and CBT has been committed. However, this does not mean that the thief's "fraud" has been validated. This becomes clear when we consider the thief's rights, if any, against the accused in civil law. Depending on the precise circumstances (which I do not propose to hypothesise here), the agreement between the thief and the accused could be vitiated for a host of reasons including the doctrines of unilateral mistake, misrepresentation and illegality. In essence, punishing the accused person's dishonest breach of trust in criminal law does not *ipso facto* mean that the trustor's fraud is otherwise validated.

47 Third, the weight of authority lies in favour of adopting the broad view. I agree with the DJ that the High Court's decision in *Pittis Stavros* is instructive. In that case, the appellant faced a charge under s 408 of the Penal Code for dishonest misappropriation of 200 metric tonnes ("mt") of marine fuel oil

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[44] ASA at [24].

("MFO"). The appellant was a chief engineer employed by a ship manager. At the material time, he was deployed on a large cargo ship ("the Vessel") which was time chartered by V8 Pool Inc. ("the charterers"). The Vessel was to receive 500mt of MFO from a company called Costank Singapore Pte Ltd ("Costank") (*Pittis Stavros* at [4]–[6]). The appellant initiated an arrangement in which the Vessel would only receive 300mt of MFO, and the remaining 200mt would be kept by Costank. The appellant would then receive a cut of the money overpaid by the charterers to Costank (*Pittis Stavros* at [2]). The appellant's appeal succeeded in part, as his earlier conviction under s 408 of the Penal Code was substituted for a conviction under s 406 of the Penal Code given that the appellant was not a servant of the charterer (*Pittis Stavros* at [58]). However, what is relevant for our purposes is the court's decision to amend the charge as follows.

48 The Prosecution's case was that the charterers had entrusted the MFO, which they were purchasing from Costank, to the appellant. Accordingly, the original charge in *Pittis Stavros* read as follows (*Pittis Stavros* at [1]):

> You, [the appellant], are charged that you, on 10 January 2013, in Singapore, being a servant of V8 Pool Inc., to wit, the Chief Engineer of MV Sakura Princess, a marine vessel chartered by V8 Pool Inc., and in such capacity being *entrusted with dominion over property* ***belonging to V8 Pool Inc.***, namely Marine Fuel Oil, did dishonestly misappropriate about 200 metric tonnes of Marine Fuel Oil by engaging in a buy-back scheme, and in so doing you did commit criminal breach of trust in respect of such property, and as such you have thereby committed an offence punishable under Section 408 of the Penal Code, Chapter 224.
>
> [emphasis added]

49 The original charge thus identified V8 Pool Inc., the charterers, as the entrusting party. However, the court decided to amend the charge by deleting the words "belonging to V8 Pool Inc.". Even though it found that V8 Pool Inc.

was the entrusting party, the court remained unsure of whether the MFO truly belonged to the charterer at the time it was being transferred to the Vessel because the charterer had yet to pay for the MFO (*Pittis Stavros* at [41]–[45]).

50 Given that all essential ingredients of the offence must be reflected in the charge (*Assathamby s/o Karupiah v Public Prosecutor* [1998] 1 SLR(R) 1030 at [9]), See JC's willingness to remove the identity of the entrusting party from the charge shows that such identity is not an element of CBT.

51 The Indian case of *Som Narth Puri* relied on by the DJ also fortifies my conclusion above at [42] that entrustment may be established even if the identity of the entrusting party is unknown. In that case, an employee of the Indian Airlines Corporation was convicted under s 409 of the IPC for dishonest misappropriation of moneys from his employer. As regards the term "entrusted" in s 405 and 409 of the IPC, the Supreme Court of India held as follows:

> Section 405 merely provides, whoever being in any manner entrusted with property or with any dominion over the property, as the first ingredient of the criminal breach of trust. The words 'in any manner' in the context are significant. The section does not provide that the entrustment of property should be by someone or the amount [received] must be the property of the person on whose behalf it is received. *As long as the accused is given possession of property for a specific purpose or to, deal with it in a particular manner, the ownership being in some person other than the accused, he can be said to be entrusted with that property to be applied in accordance with the terms of entrustment and for the benefit of the owner.* The expression 'entrusted' in section 409 is used in a wide sense and includes all cases in which property is voluntarily handed over for a

> specific purpose and is dishonestly disposed of contrary to the terms on which possession has been handed over.
>
> [emphasis added]

52 From the above, it is apparent that the Supreme Court of India regarded the appellant's receipt of property on specific terms to deal with it in a particular manner to be sufficient to establish entrustment; ascertaining the true identity of the entrusting party is unnecessary. The Supreme Court of India intimated that this conclusion flows from, among other factors, the words "in any manner", as they supported construing "entrusted" in a wide sense.

53 Finally, the leading Indian text of Justice H K Sema and Justice O P Garg (eds), *Ratanlal & Dhirajlal: The Indian Penal Code* vol 2 (34th Edition, LexisNexis, 2018) at p 2820 also confirms the correctness of the broad view:

> The word "entrusted" is not a term of law. In its most general significance, all it imports is a handing over of the possession for *some purpose* which may not imply the conferring of any proprietary right at all.
>
> [emphasis added]

54 Fourth, I am unable to agree with the appellant that the illustrations to s 405 of the Penal Code exclude the possibility of entrustment being established if the identity of the entrusting party is unknown. The appellant suggests that two conclusions should be drawn from the illustrations to s 405 of the Penal Code:[45]

> (a) None of the illustrations "involve a trust created as a result of a trustor's fraud or deceit. The victim in each of the illustration[s] is real

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45 ASA at [28].

(as opposed to fictitious or fictional characters created by an imposter) and so is the harm or detriment suffered as a result of CBT"; and

(b) The trust relationships in these illustrations all involve "legally recognisable relationships – e.g. (a) between an executor and a testator, (b) between an investor and his agent and (c) between a warehouse-keeper and his customer".

55 From these two conclusions, the appellant argues that s 405 does not apply to trusts created by fraud or deceit. However, I am unpersuaded by the appellant's reliance on the illustrations because s 7A(a) of the Interpretation Act makes clear that illustrations are not exhaustive of a provision's scope of operation. Instead, I give primacy to the plain language and object of s 405 of the Penal Code, which, as I have reasoned above, support the broad view.

56 Fifth, I reject the appellant's suggestion that the principle of *consensus ad idem* in civil law should be imported into criminal law in this case.[46] Based on how the charge is presently framed (see [6] above), the court is not concerned with whether a valid and binding contract is formed between the appellant and the entrusting party. Having regard to the object of s 405 (see [29] above), I am concerned with whether the appellant misappropriated the money in a dishonest manner, *ie*, in contravention of the terms of the entrustment. For the avoidance of doubt, my remarks on this point have no bearing on the situation where the *actus reus* of CBT is framed as a dishonest use or disposal of the entrusted property in violation of "any *legal contract*, express or implied, which [the accused] has made touching the discharge of such trust" [emphasis added] (s 405 of the Penal Code).

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[46] ASA at [33].

57 In addition, neither of the authorities cited by the appellant supports the importation of *consensus ad idem* into s 405 of the Penal Code for the purposes of this case. The appellant places reliance on *Wong Seng Kwan v Public Prosecutor* [2012] 3 SLR 12 ("*Wong Seng Kwan*") for the proposition that "the interpretation of property-related offences in the [Penal] Code cannot be divorced from substantive property rights found in civil law."[47] The appellant cites [2] of the grounds of decision in *Wong Seng Kwan*:

> It is important to recognise that civil liability for property claims has a direct bearing on criminal liability in respect of offences under Ch XVII of the Penal Code (Cap 224, 2008 Rev Ed), collectively known as "Offences Against Property". Therefore, an understanding of the scope and content of property rights in civil law is essential for a proper interpretation of criminal law provisions relating to property offences. As fittingly observed by Lord Macaulay in his book, *Speeches and Poems, with the Report and Notes on the Indian Penal Code* (Riverside Press, 1867) at p 432:
>
> > There is such a mutual relation between the different parts of the law that those parts must all attain perfection together. That portion, be it what it may, which is selected to be first put into the form of a code, with whatever clearness and precision it may be expressed and arranged, must necessarily partake to a considerable extent of the uncertainty and obscurity in which other portions are still left.
> >
> > This observation applies with peculiar force to that important portion of the penal code which we now propose to consider. *The offences defined in this chapter are made punishable on the ground that they are violations of the right of property; but the right of property is itself the creature of the law. It is evident, therefore, that if the substantive civil law touching this right be imperfect or obscure, the penal law which is auxiliary to that substantive law, and of which the object is to add a sanction to that substantive law, must partake of the imperfection or obscurity. It is impossible for us to be certain that we have made proper penal provisions for violations of civil rights till we have a complete knowledge of all civil rights; and this we cannot have while the law respecting those rights is either obscure or unsettled.* As

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47 ASA at [31].

> the present state of the civil law causes perplexity to the legislator in framing the penal code, so it will occasionally cause perplexity to the judges in administering that code. If it be matter of doubt what things are the subjects of a certain right, in whom that right resides, and to what that right extends, it must also be matter of doubt whether that right has or has not been violated.
>
> [High Court's emphasis in *Wong Seng Kwan* in italics]

58 However, Steven Chong J's (as he then was) remarks must be understood in the context of the question which arose in that appeal – whether a person can dishonestly misappropriate a piece of property which he had innocently found (*Wong Seng Kwan* at [1] and [13]). To answer this question, Chong J had regard to common law principles, including personal property law and tort law, to determine what rights, if any, the innocent finder had in relation to the property he had found (see *Wong Seng Kwan* at [25] and [31]). In this regard, Chong J finally concluded (at [32]) that:

> Since the finder has good title to the lost chattel as against the whole world except the *true owner*, criminal liability, if any, of the finder would depend on, *inter alia*, whether the true owner can be ascertained and/or identified by the finder.
>
> [emphasis in original]

59 As such, it is clear that Chong J was considering civil law principles in relation to *title* to property and did not address his mind to the question of whether contractual principles like *consensus ad idem* have any place in the criminal law.

60 Further, the article which the appellant cites, John G. Love, "Effect of Mistake of Person, Misrepresentation of Person and Impersonation in Crimes, Contracts and Negotiable Instruments" (1920) 68(4) University of Pennsylvania Law Review and American Law Register 387 ("Effect of Mistake") does not

advance its case. The appellant drew my attention to the following passage (Effect of Mistake at 387–388):

> In the law of crimes when A, who wants to kill B, mistakes X for B and wounds him, the courts have uniformly held A guilty on an indictment for assault and battery with intent to kill X. A wounded X because he believed him to be B whom he wanted to kill. He did not want to kill X, but he did intend to kill the person physically present before him. Since the person wounded was the person physically present before him, it follows that A intended to commit an assault and battery on X with intent to kill him. By this reasoning the intent, to which the courts give effect, is based on the facts of the assault and not on A's belief. Thus, the specific intent necessary for the crime was present.
>
> The question arises in the law governing the formation of executory contracts in the following type of case: A writes to B, using the name of X and represents himself to be X; B is induced to enter into negotiations with A on the faith of this representation with the view of forming a contract. There must be a meeting of the minds of the parties to make a valid contract. Therefore, the courts have held that the completion of the negotiations so entered into will not effect a contract. B did not know A, and X was the only person with whom he believed he was negotiating. B's mind never for an instant rested on A, and X was a stranger to the negotiations. There was no *consensus ad idem* between the parties to the negotiations. The effect of B's intention in this situation, based on the facts of the transaction, render the completed negotiations void as a contract. By the same reasoning, there is no contract effected when A represents himself to B, in person or by letter, to be the agent of X, a person of good repute, when in fact A is not the agent of X. On the strength of this representation B is induced to enter into negotiations with A as such agent. Here, again, B did not intend to contract with A, but entered into the negotiations relying on the reputation of X and intended to contract with X only.

61 However, as I have explained above at [56], based on how the offence of CBT was framed in the charge, the court is not concerned with whether a valid contract has been formed between the entrusting party and the appellant. The appellant may still have acted dishonestly, in contravention of the terms of the entrustment, even if he was misled as to the entrusting party's identity. Subjecting the ambit of entrustment to principles like *consensus ad idem* and

doctrines like mistake and misrepresentation will undermine the object of the provision (see [44] above) and run contrary to the guidance in *Gopalakrishnan* not to treat "entrusted" as a term of law.

Application of the law to the present facts

62 Applying the test for entrustment which I have set out at [4243] above, I see no reason to disturb the DJ's finding that the appellant was entrusted with $81,000 by Maria when he received the money from Melody.[48]

63 The following extract from the appellant's testimony shows that he knew that he was to deal with the $81,000 in accordance with Maria's instructions (*ie*, the terms of the entrustment) – to deliver it to a man in Malaysia:[49]

> **29 October 2019: Appellant, Cross-examination**
>
> Q: Alright. So then you agreed to collect this money from someone in Singapore, you also agreed with Maria that you had---were receiving the money for her in Singapore. And that's based on your statement to the police paragraph 2 page 4 the last line, "I then, agreed to receive the money for her in Singapore."
>
> A: Yes, Your Honour.
>
> Q: So you agreed with me that the money you were collecting on Maria's behalf, was to be dealt with according to Maria's instructions?
>
> A: Yes, it's Maria instruction.
>
> Q: So when you collect the money, you would be responsible for it and have to do what Maria told you to do with the money, correct?
>
> A: If I have collected the money, the---then what Maria have told me, I will do it for her.

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48 ROP at pp 368–369 (GD at [65]).

49 ROP at p 253, line 7–31.

> Q: Now based on your understanding with Maria, she wanted the money to be handed over to a black man in Malaysia, that's at paragraph 2 on page 4 of your statement.
>
> A: Yes, Your Honour.
>
> Q: So you knew that Maria wanted this money to be handed over to someone in Malaysia once you had collected it, correct?
>
> A: Yes, and she told me that she might meeting me there also too.

64 Further, the appellant testified that he had agreed to receive the money on behalf of Maria and that it was "her money" (*ie*, Maria's). This evidences his knowledge that Maria minimally had possessory rights to the money and therefore the authority to impose the terms of the entrustment on him. The relevant portion of the appellant's testimony is as follows:[50]

> **29 October 2019: Appellant, Cross-examination**
>
> Q: So can you please look at paragraph 2 of page 4 of the statement? Now, based on the 1st few lines of that paragraph which read, "After a while, she told me that her money was in Singapore and someone would call me to collect the money. I then agreed that and told Maria to let me know when it is ready to be collected.["] So my put to you is, based on this paragraph, your understanding was that you were to collect the money of S$89,000 on behalf of Maria from someone in Singapore. Agree or disagree?
>
> A: Agree, Your Honour.

65 As such, the appellant's act of pocketing the money, in breach of the terms of the entrustment, is a dishonest misappropriation which offends s 405 of the Penal Code.[51]

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50 ROP at p 252, line 21–30.

51 ROP at p 371 (GD at [71]–[72]).

Issue 2: The necessity of proving that the entrusting party is the legal owner of the property

66 While the appellant does not make submissions on this issue, I will address it briefly as the respondent has addressed it in its written and oral submissions. Having considered the plain language and the object of s 405 of the Penal Code, I see no reason to disturb the DJ's conclusion at [88] of her GD:

> Based on the foregoing, I agreed with the Prosecution that there was no requirement that the property entrusted must be property owned by [the entrusting party]. So long as the person entrusting the property had *some* right (including a bare possessory right) which he conferred on another person, the element of entrustment could be satisfied.
>
> [emphasis in original]

67 In these premises, there is no reason for me to depart from See JC's holding in *Pittis Stavros* that the entrusting party need not legally own the property, so long as the entrusting party had *some* right to the property, including a bare possessory right (at [41]–[42]):

> 41 The appellant's next contention in this regard is that V8 Pool could not possibly have entrusted him with dominion over the MFO because V8 Pool did not have any dominion over the MFO to begin with. At the time the MFO was being transferred to the Vessel, V8 Pool had yet to pay for it and hence did not own it, meaning that the MFO was not V8 Pool's "property".
>
> 42 I do not accept this contention. A person does not have to be the owner of property in order to have a right to take possession of it. There is no requirement in the provisions of the Penal Code that the property in question must be owned by the person from whom it is misappropriated. *So long as that person has some sort of right to the property, which right he then delegates to or confers upon someone else, there has in my opinion been an entrustment of dominion over the property by the*

> *first person to the second.* This is precisely what happened in the present case.
>
> [emphasis added]

68 In the present case, even in the absence of evidence that the $81,000 was legally owned by Maria, I am satisfied that Maria minimally had possessory rights to the money which she delegated to the appellant. I agree with the respondent that Maria's right to possession is evidenced by "how Maria instructed the Appellant to meet Melody to receive the cash on her behalf, and what to do with the cash once he collected it…".[52] Accordingly, Maria had the authority to entrust the $81,000 to the appellant.

Appeal against sentence

69 Although the appellant has appealed against both his conviction and sentence, his counsel did not address the court on the issue of sentencing in his submissions at the appeal. Nevertheless, I will deal briefly with this issue as the respondent has addressed it in its written submissions.

70 Broadly, the appellant challenges his sentence on the basis that the DJ: (i) placed insufficient weight on him being untraced and his personal circumstances; and (ii) failed to consider the relevant legal principles and authorities in determining the sentence.[53]

71 In respect of the first ground, the DJ explicitly accorded mitigating weight to the fact that the appellant was a first-time offender when arriving at the sentence.[54] Considering the circumstances in the round, I am unable to agree

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52 RS at [99]; ROP at p 253, line 7–13.

53 ROP at p 13.

54 ROP at p 387 (GD at [113]).

that insufficient weight was placed on this factor. While she did not regard some of the appellant's personal circumstances set out at [103(b)]–[103(g)] of the GD as being mitigating, I am satisfied that she was entitled to do so. For the factors at [103(b)] and [103(c)] of the GD (*ie*, supporting his mother and eldest sister financially, and being a father to three children and a husband), which speak to the hardship which would befall the appellant's family should he be imprisoned, the appellant has not shown how these personal circumstances are so exceptional such as to qualify as a mitigating factor pursuant to the threshold in *Public Prosecutor v Tan Fook Sum* [1999] 1 SLR(R) 1022 at [31]. For the other circumstances which go to the appellant's good character, the DJ has already accorded them due weight at [113] of the GD.

72 In respect of the second ground, I am satisfied that the DJ had duly considered the relevant sentencing precedents and arrived at an appropriate sentence after accounting for the differences in the aggravating and mitigating factors. The two main cases the DJ relied on are *Public Prosecutor v Lim Sim Hong* (DAC 915705/2015 and others) ("*Lim Sim Hong*") and *Public Prosecutor v Koh Mui Hoong* (DAC 45208/2013 and others) ("*Koh Mui Hoong*").[55]

73 In *Lim Sim Hong*, the offender committed CBT in respect of $109,106 he had received from one "Laura Smith" for the latter to purchase a property in Singapore. $85,500 was seized from the offender, and he made restitution of $10,209.75 during investigations and further restitution of $4,000 after being charged (*ie*, total amount recovered was $99,709.75).[56] The offender pleaded guilty to the charge involving CBT and consented to two other charges, involving offences under s 47(6)(*a*) of the Corruption, Drug Trafficking and

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55 ROP at pp 385–386 (GD at [108]–[110]).

56 Respondent's Bundle of Authorities ("RBOA") p 451 at [8].

Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) and s 182 of the Penal Code, being taken into consideration for sentencing. He was sentenced to 11 months' imprisonment. The DJ was of the view that a two month upward adjustment from the sentence in *Lim Sim Hong* was justified given that the appellant in this case had claimed trial and made no restitution for the moneys misappropriated.[57] In light of the distinguishing factors identified by the DJ, I am unable to find that the sentence imposed is manifestly excessive.

74 In *Koh Mui Hoong*, the offender pleaded guilty to, *inter alia*, two charges for CBT concerning $90,000 and $115,000 entrusted to her by her cousin for investment purposes. No restitution was made, and, after pleading guilty, the offender was sentenced to one year's imprisonment per charge. The DJ imposed an uplift from *Koh Mui Hoong* as the appellant in this case, having claimed trial, was not entitled to the sentencing discount afforded to offenders who plead guilty.[58] I am in agreement with the DJ's basis for distinguishing *Koh Mui Hoong* and, more generally, see no reason to fault her analysis of both the above sentencing precedents.

75 Finally, for completeness, having considered the DJ's reasons for the sentence, I am satisfied that she did not fail to consider any relevant legal principles when exercising her sentencing discretion and that the sentence imposed is not manifestly excessive.

Conclusion

76 For these reasons, I dismiss the appellant's appeal against his conviction and sentence.

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57 ROP at p 386 (GD at [110]–[111]).

58 ROP at p 386 (GD at [111]).

Vincent Hoong
Judge of the High Court

Anand George (BR Law Corporation) for the appellant;
Stacey Anne Fernandez and Ong Xin Jie (Attorney-General's Chambers) for the respondent.
