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

[2023] SGHC 219

Magistrate's Appeal No 9053 of 2023

Between

Guo Wei

… *Appellant*

And

Public Prosecutor

… *Respondent*

EX TEMPORE JUDGMENT

[Criminal Procedure and Sentencing — Disposal of property]
[Criminal Procedure and Sentencing — Revision of proceedings]

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Guo Wei
v
Public Prosecutor

[2023] SGHC 219

General Division of the High Court — Magistrate's Appeals No 9053 of 2023
Vincent Hoong J
10 August 2023

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Vincent Hoong J (delivering the judgment of the court *ex tempore*):

Introduction

1 The appellant, Mr Guo Wei, was a victim of a scam. He received a WhatsApp message from an unknown individual offering to sell the appellant $50,000 worth of a cryptocurrency known as USDT for a sum of $34,000. The appellant accepted this offer and made a transfer of $34,000 to a bank account as instructed by the unknown individual. The appellant never received any USDT from the unknown individual.

2 Unbeknownst to the appellant, the sum of $34,000 which he had transferred as instructed by the unknown individual was, in fact, to a bank account owned by a watch shop, Watch Capital. Watch Capital had earlier listed a Rolex Daytona watch ("the Rolex Watch") for sale at $34,000 on the electronic commerce website, Carousell. As a result of the appellant's transfer,

a second unknown individual was able to obtain the Rolex Watch from Watch Capital through various intermediaries by representing that he had made the transfer of $34,000 to Watch Capital as payment for the Rolex Watch. Subsequently, through intermediaries again, the unknown individuals were able to sell the Rolex Watch to another watch shop called The Finest Time Pte Ltd ("The Finest Time") for $31,000.

Summary of the transactions

3 I set out below a summary of the transactions between the various intermediaries:

(a) One Mr Elroy Low Zi Quan ("Elroy") received a message from an unknown individual known only as "K" who asked him to collect the Rolex Watch on his behalf from Watch Capital for which Elroy would be paid $5,000. Elroy agreed to do this.

(b) Elroy asked one Mr Muhamad Fairus bin Abu Bakar ("Fairus") to collect the Rolex Watch from Watch Capital on his behalf. Fairus contacted one Mr Bryan Tan Wei Xuan ("Bryan") to collect the Rolex Watch from Watch Capital on his behalf. Bryan contacted one Mr Gabriel Chee Jun Kang ("Gabriel") to collect the Rolex Watch from Watch Capital on his behalf.

(c) Gabriel collected the Rolex Watch from Watch Capital and handed the Rolex Watch to Fairus. Fairus then handed the Rolex Watch to Elroy. Elroy gave $3,000 to Fairus.

(d) Thereafter, "K" instructed Elroy to sell the Rolex Watch on his behalf for which Elroy would be paid an additional $5,000. Elroy agreed to do this.

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(e) Elroy made various inquiries with watch shops before deciding to sell the Rolex Watch to The Finest Time for $31,000. In a similar fashion as the earlier transaction relating to the collection of the Rolex Watch from Watch Capital, Elroy approached Fairus to assist with selling the Rolex Watch to The Finest Time on his behalf. Fairus asked Bryan to assist with selling the Rolex Watch. Bryan, in turn, asked Gabriel to assist with selling the Rolex Watch. The Rolex Watch was then handed by Elroy to Fairus before being handed to Gabriel.

(f) Gabriel sold the Rolex Watch to The Finest Time and collected $31,000. Gabriel handed the sum of $31,000 to Fairus.

(g) According to Elroy, he collected a sum of $28,000 from Fairus and the remaining sum of $3,000 was retained by Fairus to be passed to Bryan and Gabriel as payment for their help with collecting and selling the Rolex Watch.

(h) Of the $28,000 collected by Elroy, $25,000 was spent by Elroy to purchase cryptocurrency and $3,000 was spent on Elroy's personal expenses. The cryptocurrency was eventually sold, and, on the instructions of "K", Elroy transferred a significant portion of the proceeds to the bank accounts of two individuals: one Mr Wee Jia Jun ("Wee") and one Mr Wong Chee Hong ("Wong"). Wee had purportedly lost his physical debit card linked to his bank account, and Wong had granted access to his bank account to an unknown individual for a sum of $750.

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Disposal inquiry in the court below

4 A disposal inquiry was convened for the disposal of items seized by the police. The items seized were as follows:

(a) a sum of $34,000 in Watch Capital's bank account, which was the sum the appellant had transferred to the bank account of Watch Capital on the instructions of the unknown individual;

(b) the Rolex Watch which had been seized from The Finest Time, which was the watch sold to The Finest Time through intermediaries;

(c) a sum of $10,540.10 in Elroy's bank account;

(d) a sum of $2,554.82 in Wee's bank account;

(e) a sum of $3,537.80 in Wong's bank account; and

(f) a sum of $2,000 in cash comprising $200 seized from Fairus, $400 seized from Bryan and $1,400 seized from Gabriel.

5 The appellant was a claimant in a disposal inquiry before the District Judge ("DJ"). The appellant's position was as follows:

(a) The appellant claimed the sum of $34,000 in Watch Capital's bank account which had been seized. This was the sum which the appellant had transferred to Watch Capital on the instructions of the unknown individual for the purchase of USDT which the appellant ultimately never received.

(b) In the alternative, the appellant claimed the Rolex Watch which had been seized from The Finest Time.

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(c) In the alternative, the appellant claimed the following sums of money which had been seized:

(i) the sum of $10,540.10 in Elroy's bank account;

(ii) the sum of $2,554.82 in Wee's bank account;

(iii) the sum of $3,537.80 in Wong's bank account; and

(iv) the sum of $2,000 in cash seized from Fairus, Bryan and Gabriel comprising $200 seized from Fairus, $400 seized from Bryan and $1,400 seized from Gabriel.

6 Besides the appellant, Watch Capital, The Finest Time and Elroy participated in the disposal inquiry in the court below. Having considered the parties' submissions, the DJ made the following disposal orders:

(a) The sum of $34,000 in Watch Capital's bank account was to be released to Watch Capital.

(b) The Rolex Watch seized from The Finest Time was to be released to The Finest Time.

(c) The sum of $10,540.10 in Elroy's bank account was to be released to Elroy.

(d) The sums of $2,554.82 in Wee's bank account, $3,537.80 in Wong's bank account and $2,000 in cash were to be forfeited to the State.

7 The appellant is dissatisfied with the DJ's disposal orders and seeks to appeal against the DJ's orders.

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My decision

8 First, it is clear that there is no right of appeal in the context of a disposal inquiry as set out in the cases of *Sofjan and another v Public Prosecutor* [1968-1970] SLR(R) 782 (at [14]) and *Thai Chong Pawnshop Pte Ltd and others v Vankrisappan s/o Gopanaidu and others* [1994] 2 SLR(R) 113 (at [12]). This was recently reiterated in *Lim Tien Hou William v Ling Kok Hua* [2023] SGHC 18 ("*William Lim*") (at [2]). While the appellant may be dissatisfied with the DJ's disposal orders, there is no right of appeal and the only available recourse is to invoke the revisionary jurisdiction of the High Court. Hence, I will proceed to consider whether the court's revisionary powers should be exercised in this case.

9 In order for this court to consider exercising its revisionary jurisdiction, the appellant must show that there was a fundamental error occasioning a clear failure of justice: see *Sim Cheng Ho and another v Lee Eng Soon* [1997] 3 SLR(R) 190 (at [5]).

10 Having reviewed the facts of this case and the DJ's decision, I do not find that there was a fundamental error occasioning a clear failure of justice. In my view, the DJ's disposal orders were consistent with the law as it stands. My views on each of the DJ's disposal orders are as follows:

(a) In relation to the sum of $34,000 in Watch Capital's bank account, the DJ was correct to find that both the appellant and Watch Capital fulfilled the precondition of being in lawful possession of the seized property. On the part of the appellant, the sum of $34,000 originated from the appellant's bank account and the transfer of the sum was procured by fraud perpetrated by an unknown individual on the pretext of the appellant purchasing USDT. Watch Capital, on the other

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hand, had received the sum of $34,000 as part of a legitimate contractual transaction involving the sale of the Rolex Watch, without any indication of criminal behaviour on its part. Here, I emphasise that there was no evidence adduced in the court below to suggest that Watch Capital was aware of or involved in the scam perpetrated against the appellant. The appellant also did not take the position that Watch Capital was aware of or involved in the scam. In a case where both claimants have satisfied the precondition of being in lawful possession of the property, *and there is no further evidence available as to who has a better claim*, the court in *William Lim* made clear (at [56]) that the property should be returned to the lawful possessor of the property *at the point of seizure*. In this case, Watch Capital was in lawful possession of the sum of $34,000 at the point of seizure and there was no further evidence available as to who had a better claim. Therefore, the DJ was correct to order that the sum of $34,000 in Watch Capital's bank account be released to Watch Capital.

(b) In relation to the Rolex Watch seized from The Finest Time, the DJ was correct to find that both the appellant and The Finest Time fulfilled the precondition of being in lawful possession of the seized property. The Rolex Watch was released by Watch Capital upon receipt of the sum of $34,000 from the appellant's bank account, and subsequently sold by intermediaries to The Finest Time. The appellant fulfilled the precondition of being in lawful possession of the Rolex Watch because it was traceable to the sum of $34,000 transferred by the appellant to Watch Capital. On the other hand, The Finest Time obtained the Rolex Watch as part of a legitimate contractual transaction involving the purchase of the Rolex Watch for $31,000, without any indication of criminal behaviour on its part. Here, there was again no evidence

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adduced in the court below to suggest that The Finest Time was aware of or involved in the scam perpetrated against the appellant. The appellant also did not take the position that The Finest Time was aware of or involved in the scam. Therefore, the DJ was correct to order that the Rolex Watch be released to The Finest Time, since The Finest Time was in lawful possession of the Rolex Watch at the point of seizure and there was no further evidence available as to who had a better claim.

(c) In relation to the sum of $10,540.10 in Elroy's bank account, the appellant appears to assert that this sum comprises proceeds of the scam which Elroy was involved in. However, the appellant was unable to adduce any evidence of this in the court below. Rather, based on the evidence in the court below, most of the proceeds from the scam perpetrated against the appellant were dissipated shortly after the sum was transferred by the appellant out of his bank account. According to Elroy, the sum in his bank account constituted moneys from his own business and were unrelated to the present case. Elroy adduced his bank statements as evidence which showed numerous transactions unrelated to the present case and which supported his claim. Ultimately, as was stated by the investigation officer in the course of cross-examination at the disposal inquiry, the police were unable to ascertain if the sum in Elroy's bank account were criminal proceeds given that there were deposits and withdrawals that were unrelated to this case (see Notes of Evidence, 3 October 2022 at page 17). Given the state of the evidence, the appellant had not been able to show any interest in the seized sum in Elroy's bank account. In contrast, Elroy had shown that he had an interest in the sum. Therefore, the DJ was correct to order that the sum of $10,540.10 be released to Elroy since he was the only one who was entitled to the sum.

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(d) Finally, in relation to the sums of $2,554.82 in Wee's bank account, $3,537.80 in Wong's bank account and $2,000 in cash comprising sums seized from Gabriel, Fairus and Bryan, I find that the DJ was justified to order that these sums be forfeited to the State. Wee, Wong, Gabriel, Fairus and Bryan did not lay claim to the amounts which were seized from them. However, notably, the appellant was unable to show any interest in the seized sums apart from a bare assertion that these were proceeds from the scam perpetrated against him. In the absence of any evidence to support the appellant's assertion, the DJ was correct to exercise her discretion to order that the sums be forfeited to the State.

11 The appellant has stated in his written submissions that this was a "triangular fraud" involving multiple victims and that responsibility should be shared among the various victims. The appellant also asserts that placing the "entirety of the blame" on him would be unfair. However, I think it is important to explain to the appellant here that a disposal inquiry is not conclusive as to title. A disposal inquiry is simply an inexpensive and expeditious manner of distributing items seized by the police in the course of investigations. While the outcome of the disposal inquiry may be such that the appellant feels that he is being penalised while the other claimants, Watch Capital and The Finest Time, are able to retain the sum of $34,000 and the Rolex Watch respectively, based on the law as it stands, the DJ did not err in the orders which were made. There was, therefore, no fundamental error occasioning a clear failure of justice.

12 What is crucial to highlight to the appellant is that the orders made in a disposal inquiry *do not* preclude parties from commencing a civil suit to assert their rights. A disposal inquiry is simply not the appropriate forum to conclusively decide on title. I am, however, in no way suggesting that the

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appellant should commence a civil suit as this is a decision for the appellant to make based on legal advice if he decides to seek such advice.

13 For the reasons above, I dismiss the appeal as there is no right of appeal in the context of a disposal inquiry. Further, as there was no fundamental error occasioning a clear failure of justice. I do not find that this court should exercise its revisionary jurisdiction.

Conclusion

14 Finally, I make some brief observations on the oral judgment issued by the court below. It is trite that there is a duty to give reasons for judicial decisions. This accords with the principle of open justice, and also allows parties to understand the reasons underlying the decision, which is especially important in cases involving self-represented persons. A written decision also assists the appellate court by laying out the facts and evidence, thereby setting the background against which the decision can be properly understood.

15 In the present case, the DJ in a brief oral judgment failed to adequately explain why the appellant's claims could not be granted. Furthermore, the DJ omitted to set out the background facts with sufficient clarity and detail, making it difficult for the appellate court to grasp the context surrounding the issues and how the various parties were involved in the various transactions. The oral judgment could only be properly understood when read together with the Investigation Report prepared by the Investigation Officer and the Notes of Evidence. While I appreciate that this was not the usual appeal against the merits of a conviction/acquittal or sentence, but instead involved the outcome of a disposal inquiry, judges in the lower courts should nevertheless adequately provide the reasons for each of their decisions, so as to enable parties to

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understand the ruling which has been made, as well as ensure that the judgment adequately captures the necessary background facts and evidence, so that the decision can be understood in its context.

Vincent Hoong
Judge of the High Court

Appellant in person;
Sheldon Lim (Attorney-General's Chambers) for the respondent.

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