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

[2024] SGHC 169

Magistrate's Appeal No 9077 of 2023

Between

Public Prosecutor

… *Appellant*

And

Sim Chon Ang Jason

… *Respondent*

Magistrate's Appeal No 9078 of 2023

Between

Public Prosecutor

… *Appellant*

And

Tjioe Chi Minh

… *Respondent*

Version No 1: 03 Jul 2024 (15:00 hrs)

Magistrate's Appeal No 9143 of 2023/01

Between

Sim Chon Ang Jason

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9143 of 2023/02

Between

Public Prosecutor

… *Appellant*

And

Sim Chon Ang Jason

… *Respondent*

JUDGMENT

[Criminal Law — Appeal]
[Criminal Law — Statutory offences — Penal Code]
[Criminal Law — Statutory offences — Companies Act]

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Public Prosecutor
v
Sim Chon Ang Jason and other appeals

[2024] SGHC 169

General Division of the High Court — Magistrate's Appeals Nos 9077, 9078 and 9143 of 2023
Vincent Hoong J
5–6 March 2024

3 July 2024 Judgment reserved.

Vincent Hoong J:

Introduction

1 Mr Jason Sim Chon Ang ("Sim") was the director, chief executive officer ("CEO") and founder of Jason Parquet Specialist (Singapore) Pte Ltd ("JPS") at the time of the offences. JPS was involved in the business of supplying and installing timber flooring products. JPS was a wholly owned subsidiary of Jason Parquet Holdings Limited ("JPH"). Sim was the CEO, shareholder and board director of JPH as well.

2 Mr Tjioe Chi Minh ("Tjioe") was the managing director and a shareholder of Tati Trading Pte Ltd ("Tati") which was similarly in the business of supplying timber and timber trading. Tati was one of JPS's biggest suppliers and supplied JPS with processed timber for about 15 to 20 years.

3 In a joint trial below:

(a) Sim was convicted of five charges of cheating punishable under s 420 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") for deceiving banks with false invoices and delivery orders to dishonestly induce the banks to disburse $2,035,000 in total to Tati (the "Cheating Charges"). Sim was sentenced to an aggregate of 36 months' imprisonment.

(b) Sim was acquitted of one charge under s 76(1)(*a*)(ii)(B) and punishable under s 76(5) and read with s 408(3)(*b*) of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act") for indirectly providing financial assistance to Tjioe in connection with the proposed acquisition of shares in JPH (the "Companies Act Charge").

(c) Tjioe was acquitted of five charges for abetting by intentionally aiding Sim to cheat the banks, by instructing his employee to submit the false invoices and delivery orders to JPS, under s 420 and read with s 109 of the Penal Code (the "Abetment of Cheating Charges").

4 There are four related appeals in the present case:

(a) Sim's appeal against his conviction and sentence for the Cheating Charges (HC/MA 9143/2023/01) ("MA 9143/01").

(b) The Prosecution's cross appeal against the sentence imposed on Sim for the Cheating Charges (HC/MA 9143/2023/02) ("MA 9143/02").

(c) The Prosecution's appeal against Sim's acquittal on the Companies Act Charge (HC/MA 9077/2023/01) ("MA 9077").

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(d) The Prosecution's appeal against Tjioe's acquittal on the Abetment of Cheating Charges (HC/MA 9078/2023/01) ("MA 9078").

5 My decision is as follows:

(a) With respect to MA 9143/01, I dismiss Sim's appeal against conviction and sentence for his Cheating Charges.

(b) With respect to MA 9143/02, I allow the Prosecution's cross-appeal against Sim's sentence. Sim's aggregate sentence is enhanced from 36 months' imprisonment to 44 months' imprisonment.

(c) With respect to MA 9077, I allow the Prosecution's appeal and convict Sim of the Companies Act Charge.

(d) With respect to MA 9078, I allow the Prosecution's appeal and convict Tjioe of the Abetment of Cheating Charges.

6 I now provide the reasons for my decision.

Background

Facts relating to the Cheating Charges and the Abetment of Cheating Charges

7 The Cheating Charges faced by Sim are largely similar in form, even though they differ across the five charges in relation to the identity of the banks cheated, the reference number of the invoices and delivery orders, and the amount cheated. As such, I reproduce only one of the Cheating Charges for reference:

You,

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> …
>
> are charged that you, in Singapore, being a director of Jason Parquet Specialist (Singapore) Pte Ltd ("JPS"), did cheat DBS Bank Ltd by deceiving the bank into believing that 111,111.1110 square feet of engineered oak of the dimensions 18 mm x 150 mm x 1000-2000 mm were sold and delivered to JPS by Tati Trading Pte Ltd on 7 September 2012 in relation to an invoice and delivery order bearing reference number A5532, when it was not so, and by such manner of deception, dishonestly induced DBS Bank Ltd to deliver a sum of S$535,000.00 to Tati Trading Pte Ltd on 11 September 2012, which the bank would not have done if it was not so deceived, and you have thereby committed an offence punishable under section 420 of the Penal Code (Chapter 224, 2008 Revised Edition).

8 Tjioe faced five charges for abetting by intentionally aiding Sim to cheat the banks, by instructing his employee, Ms Sally Ng ("Sally"), to prepare and submit the invoices and delivery orders (the "Supporting Documents") to JPS, while knowing that JPS would use the Supporting Documents to cheat the banks. These five charges mirror the Cheating Charges. I reproduce one of the Abetment of Cheating Charges for reference:

> You,
>
> …
>
> are charged that you, in Singapore, being a director of Tati Trading Pte Ltd, did abet by intentionally aiding Jason Sim Chon Ang, a director of Jason Parquet Specialist (Singapore) Pte Ltd ("JPS") to cheat DBS Bank Ltd, *to wit*, you instructed your employee to submit an invoice and delivery order bearing reference number A5532 to JPS knowing that JPS would use the said invoice and delivery order to deceive the bank into believing that 111,111.1110 square feet of engineered oak of the dimensions 18 mm x 150 mm x 1000-2000 mm were sold and delivered to JPS by Tati Trading Pte Ltd on 7 September 2012, when it was not so, and by such manner of deception, dishonestly induced DBS Bank Ltd to deliver a sum of S$535,000.00 to Tati Trading Pte Ltd on 11 September 2012, which the bank would not have done if it was not so deceived, and you have thereby committed an offence punishable under section 420 read with section 109 of the Penal Code (Chapter 224, 2008 Revised Edition).

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9 JPS had post-shipment invoice financing facilities with three banks. These banks comprise DBS Bank ("DBS"), Standard Chartered Bank (Singapore) Limited ("SCB") and Malayan Banking Berhad ("Maybank"). I shall collectively refer to the three banks as "the banks".

10 The post-shipment facilities allow JPS to obtain loans from the banks to pay their suppliers after the purchase and delivery of goods. The banks require supporting documents for each loan application. When JPS applied to draw down on their post-shipment financing facilities with the banks, an invoice and delivery order from their supplier are provided to the banks as supporting documents. After the application is approved, the banks disburse money directly to JPS's suppliers.

11 Between 7 September 2012 and 16 March 2015, JPS submitted five applications for invoice financing from the banks (the "Applications") which correspond to the five Cheating Charges faced by Sim:[1]

(a) DAC-924315-2018 (1st Cheating Charge): on 7 September 2012, JPS submitted to DBS an Application with an invoice and delivery order, both bearing the reference number **A5532**, for 111,111.1110 square feet of engineered oak of the dimensions 18 mm x 150 mm x 1000–2000 mm. Pursuant to the Application, DBS delivered a sum of $535,000 to Tati on 11 September 2012.

(b) DAC-924316-2018 (2nd Cheating Charge): on 17 February 2014, JPS submitted to SCB an Application with an invoice and delivery order,

[1] Statement of Agreed Facts ("SOAF") at [4]; Record of Proceedings ("ROP") at pp 36 to 38.

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both bearing the reference number **TT-5710**, for the goods described in the table below. Pursuant to the Application, SCB delivered a sum of $300,000 to Tati on 18 February 2014.

S/N	Description of goods	Quantity in square feet
1	Oak T&G 18 mm x 150 mm x 1000–2100 mm	3,117.0660
2	Engineered Oak (Wire Brush) 15 mm x 150 mm x 850–1600 mm	1,613.2114
3	Oak (Herringbone 4 Sided) 18 mm x 60 mm x 600 mm	2,415.6999
4	Engineered Oak (C2 + C4) 15 mm x 150 mm x 850–1850 mm	1,015.0990
5	Engineered Oak (Nassim) 18 mm x 189 mm x 550–1950 mm	28,036.3493

(c) DAC-924317-2018 (3rd Cheating Charge): on 7 May 2014, JPS submitted to Maybank an Application with an invoice and delivery order, both bearing reference number **TT-5895**, for the goods as described in the table below. Pursuant to the Application, Maybank delivered a sum of $500,000 to Tati on 9 May 2014.

S/N	Description of goods	Quantity in square feet
1	Oak T&G 18 mm x 95 mm x 600–1200 mm	57,214.3015
2	Engineered Oak (Wire Brush) 15 mm x 150 mm x 600–1200 mm	23,680.8000
3	Oak Parquet 11 mm x 50 mm x 200–400 mm	38,257.8760

(d) DAC-924318-2018 (4th Cheating Charge): on 7 May 2014, JPS submitted to SCB an Application with an invoice and delivery order, both bearing reference number **TT-5896**, for 39,769.3375 square feet of Oak T&G of the dimensions 18 mm x 95 mm x 600–1200 mm. Pursuant to the Application, SCB delivered a sum of $200,000 to Tati on 7 May 2014.

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(e) DAC-924319-2018 (5th Cheating Charge): on 16 March 2015, JPS submitted to DBS an Application with an invoice and delivery order, both bearing reference number **TT-6086**, for 94,401.9635 square feet of Oak T&G (Select & Better) of the dimensions 18mm x 95mm x 600–2100mm. Pursuant to the Application, DBS delivered $500,000 to Tati on 17 March 2015.

12 Each Application submitted by JPS was authorised by Sim. It is undisputed that, at the time each Application was made, no goods as described in the Supporting Documents had been physically delivered to JPS.[2]

13 All the Applications were approved by the banks, and the money was disbursed by the bank directly to Tati. The money received pursuant to the Applications was recorded as either "deposits" or "advances" in JPS' and Tati's respective accounts.[3]

Facts relating to the Companies Act Charge

14 The Companies Act Charge faced by Sim alleged that he had indirectly provided illegal financial assistance to Tjioe in connection with the proposed acquisition of 2.5 million shares in JPH:

> You,
>
> …
>
> are charged that you, on or about 7 September 2012, being the director of Jason Parquet Specialist (Singapore) Pte Ltd ("**JPS**"), a company incorporated in Singapore, did knowingly and wilfully authorise JPS to indirectly give financial assistance to one Tjioe Chi Minh ("**Tjioe**") of Tati Trading Pte Ltd ("**Tati**") in

2 SOAF at [6] and [8]; ROP at p 38.

3 SOAF at [7] and [9]; ROP at p 38.

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> connection with the proposed acquisition by Tjioe of shares in Jason Parquet Holdings Limited ("**JPH**"), which is the holding company of JPS, *to wit*, by authorising JPS to obtain a trade financing loan from DBS Bank Ltd so as to pay the sum of S$535,000 to Tati, which was in connection with the proposed acquisition by Tjioe of 2.5 million shares in the initial public offering of JPH, at S$0.225 per share, by which act JPS had contravened section 76(1)(*a*)(ii)(B) of the Companies Act (Chapter 50, 2006 Revised Edition) ("**the Act**"), and you have thereby committed an offence punishable under section 76(5) of the Act read with section 408(3)(*b*) of the Act.

15 The Companies Act Charge is closely connected to the 1st Cheating Charge. The relevant timeline is as follows:[4]

(a) On 7 September 2012, JPS submitted to DBS an Application with an invoice and delivery order for $535,000 worth of timber.

(b) On 11 September 2012, after approving the Application, DBS delivered the sum of $535,000 to Tati.

(c) On 12 September 2012, Tati issued a cheque for $535,000 to Tjioe. On the same day, Tjioe deposited the cheque into his personal bank account and paid $568,523.75 to subscribe for 2.5 million shares in JPH as part of JPH's initial public offering ("IPO").

Parties' cases at trial

The Prosecution's case

16 With respect to Sim's Cheating Charges:

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4 SOAF at [10] to [11]; ROP at pp 38 to 39.

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(a) The Supporting Documents, as prepared by Tati and submitted by JPS to the banks as part of the Applications, were fictitious and did not represent genuine underlying transactions.

(b) The banks were deceived into believing that the Supporting Documents were genuine and were induced to deliver money to Tati.

(c) Sim knew that the Supporting Documents were fictitious and acted dishonestly. Sim utilised the invoice financing scheme from the banks to obtain money for his own extraneous purposes, such as the purchase of JPH shares that is the subject of the Companies Act Charge.

17 With respect to Sim's Companies Act Charge, the loan obtained by JPS from DBS of $535,000 (which is the subject matter of the 1st Cheating Charge as well) was given to Tjioe through Tati to finance Tjioe's acquisition of 2.5 million shares in JPH.

18 With respect to Tjioe's Abetment of Cheating Charges, Tjioe intentionally aided Sim to cheat the banks by instructing Sally to prepare fictitious Supporting Documents, and then he personally hand-delivered the Supporting Documents to JPS. Tjioe knew that the Supporting Documents were false representations, and that JPS intended to submit the Supporting Documents to the banks to obtain loans. Tjioe benefited from the scheme as Tati could collect a deposit from JPS and later, on the agreement of both sides, use the deposit to cover JPS's other debts with Tati.

Sim's defence

19 Sim argued that there was no deception of the banks. He put forth two main defences in this regard. First, the "Consolidated Invoice Defence" with

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respect to the 2nd, 3rd and 4th Cheating Charges. Although the Supporting Documents were inaccurately worded, they were genuine in substance as they were a consolidation of past transactions between JPS and Tati. The loans were used to pay for real goods that were already invoiced and delivered to JPS. The consolidation and misdescription of the Supporting Documents were done by Sally out of laziness, without instructions from or the knowledge of Sim and Tjioe.

20 Second, the "Earmarking Defence" with respect to the 1st and 5th Cheating Charges. According to Sim, the timber described in the Supporting Documents existed at the material time and were "earmarked" for JPS. In other words, the timber was reserved or set aside for JPS in Tati's warehouse, even though the timber had not been physically delivered to JPS. According to Sim, there was no requirement by the banks that the goods had to be physically delivered to JPS's premises for JPS to apply for invoice financing. As such, there was no dishonest intention by Sim since there was constructive delivery and acceptance of the timber which Sim believed to be sufficient to obtain post-shipment financing. For the 1st Cheating Charge, Sim claimed the timber described in the Supporting Documents was earmarked for a condominium project known as the Twin Peaks project. According to Sim, the earmarked timber was eventually delivered a few months after the money was already disbursed to Tati by the bank. For the 5th Cheating Charge, Sim claimed the timber described in the Supporting Documents was earmarked for a project known as the IB Tower project. According to Sim, Tati returned the deposit to JPS as the IB Tower project was cancelled.

21 Finally, the Companies Act Charge was not made out because the $535,000 disbursed to Tati was for a legitimate transaction. Once the money

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was given to Tati, it was Tati's prerogative to do as they wished with the money. In this case, Tati chose to use the $535,000 to repay a loan from Tjioe and Tjioe chose to pay for JPH's shares.

Tjioe's defence

22 Tjioe's defence was that he did not possess the *mens rea* to intentionally aid Sim to cheat the bank. First, Tjioe similarly argued that the Supporting Documents reflected genuine underlying transactions between Tati and JPS. There was a running account between Tati and JPS over the years, which involved JPS paying Tati lump sums of money for outstanding debts owed to Tati. Second, Tjioe was unaware of how Sally prepared the invoices from Tati for payment. Finally, Tjioe was also unaware that JPS intended to use the Supporting Documents for post-shipment invoice financing.

23 Counsel for Tjioe also argued that minimal weight should be attributed to Tjioe's statements as his answers were given with the benefit of hindsight after he had the opportunity to clarify the events that transpired with Sally. Counsel urged the court to be "careful not to equate the Accused's subsequent understanding of what had taken place with having had the requisite *mens rea* at the material time".[5]

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5 Defence's Closing Submissions for Tjioe dated 11 January 2023 at [25]; ROP at p 6374.

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The decision below

In respect of Sim

24 The District Judge ("DJ") made the following findings before convicting Sim of the Cheating Charges:

(a) The banks were deceived. There was no delivery or receipt of the timber with the specified types, dimensions and quantities either before or on the dates stated in the Supporting Documents.

(b) The DJ rejected the Consolidated Invoices Defence. He found that the Supporting Documents could not have been a consolidation of past transactions between JPS and Tati, since the funds obtained by JPS from the banks were used for *future* invoices by way of set offs and contra notes. In any event, the Consolidated Invoices Defence was not a valid one since it did not change the fact that Sim deceived the banks by falsely stating that the timber was delivered and received as specified in the Supporting Documents.

(c) The DJ rejected the Earmarking Defence as it was similarly not borne out by evidence. The wood as described in the invoices simply did not exist. Sim's defence was also contradicted by Tjioe, who revealed that he personally never earmarked goods. Furthermore, the Earmarking Defence was irrelevant since the fact remained that the representations to the bank were untrue.

(d) Sim was dishonest as he knew that physical delivery of goods was a condition for obtaining finance from the banks, and he knew that no goods as described in the Supporting Documents were actually

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delivered. Nonetheless, he proceeded to apply for and obtain loans from the banks, which he would not have obtained without the deception.

25 The DJ acquitted Sim of the Companies Act Charge. The DJ accepted that Tjioe's purchase of JPH's shares could be traced to the payment of $535,000 to Tati. However, the DJ found that the $535,000 paid to Tati was also a deposit or advance payment for the Twin Peaks project and "the use of the funds Tati received for its business [was] well within Tati's legitimate right to use as it deemed fit".[6]

26 An aggregate sentence of 36 months' imprisonment was imposed on Sim. The breakdown is as follows:

Cheating Charges	Amount involved ($2,035,000 in total)	Sentence imposed
1st Charge (DAC-924315-2018)	$535,000 (DBS)	16 months' imprisonment
2nd Charge (DAC-924316-2018)	$300,000 (SCB)	9 months' imprisonment
3rd Charge (DAC-924317-2018)	$500,000 (Maybank)	15 months' imprisonment (Consecutive)
4th Charge (DAC-924318-2018)	$200,000 (SCB)	6 months' imprisonment (Consecutive)
5th Charge (DAC-924319-2018)	$500,000 (DBS)	15 months' imprisonment (Consecutive)

6 Grounds of Decision dated 15 May 2023 ("Conviction GD") at [61]; ROP at p 3380.

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27 The DJ found that the dominant sentencing principle was that of deterrence. He also had regard to the following offence-specific factors:

(a) The total amount cheated was around two million. Although the loans were repaid, JPS had a practice of rolling over bank loans to pay those that fell due. The absence of realised losses did not mean that there was no harm to the banks. However, the DJ accepted Sim's submission that he did not intend to cause financial harm to the banks.

(b) The bank suffered from a risk of exposure that they did not agree to bear.

(c) Although the offences were difficult to detect, the offences were not carefully orchestrated as Sim did not give instructions as to how the false information should be provided.

(d) Sim's motives for committing the offences were generally not for personal gain, but also not for altruistic reasons. The offences were committed for extraneous purposes such as the listing of JPH for the company to venture overseas, and to increase the subscription of the convertible bonds issued by JPH for the 1st, 3rd and 4th Cheating Charges. With respect to the 2nd Cheating Charge, the funds were primarily used to offset future invoices of goods delivered by Tati. With respect to the 5th Cheating Charge, the funds were used by Sim to obtain a personal loan from Tjioe.

28 The DJ noted that the present case was more egregious than *Tan Thiam Wee v PP* [2012] 4 SLR 141 ("*Tan Thiam Wee*"). In that case, the offender cheated approximately two million dollars in total from the bank as well.

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However, the court accorded significant mitigating weight to the fact that the offences were committed to keep the company afloat. The aggregate sentence was reduced from 60 months' imprisonment to 30 months' imprisonment on that account. In the present case, Sim obtained the loans for "extraneous purposes" for four of the five Cheating Charges. In view of Sim's higher culpability, "the global sentence for the present case should be higher than that in *Tan Thiam Wee* but not too significantly".[7]

29 The DJ noted that there were no relevant offender-specific mitigating factors. He ordered three of the five sentences to run consecutively, since the offences spanned multiple years and there were three distinct banks that fell victim to the fraudulent scheme.

In respect of Tjioe

30 The DJ acquitted Tjioe of the Abetment of Cheating Charges. The DJ found that, although Tjioe was aware that the Supporting Documents were to be used by JPS for financing purposes, there was no evidence that Tjioe knew that JPS's use of the Supporting Documents was an improper or illegal way of obtaining the funds. Tjioe was not privy to the arrangements between JPS and the banks and would not have known that Sim was obtaining the loans improperly. Tati and JPS had a longstanding relationship and a running account of sizeable amounts, and the money from the banks was ultimately used for legitimate business transactions between Tati and JPS.

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7 GD dated 31 August 2023 ("Sentencing GD") at [21]; ROP at p 3394.

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31 The DJ also found that the Prosecution placed too much emphasis on Tjioe's statements, and Tjioe's answer to one question in particular:[8]

> Question 97: Do you have anything to add to your statement?
>
> Answer: I have told you everything as honestly as possible. **The invoice JPS ask me to issue is not proper but I have no choice sometimes in business because that the way they have paid me for quite some time, using the bank financing.** At that time I didn't think it was wrong but when you pointed out the serial number of the invoice: TT-6086, it is not in sequence so I know it's not proper.
>
> [emphasis added in bold]

32 In the DJ's view, "[Tjioe's] answers in his statements had to be read in context and with an eye to the fact that these statements were recorded in August 2016, after the Ernst & Young investigations, which meant that [Tjioe] came to know the information after the fact".[9]

The parties' cases on appeal

The Prosecution's case

33 The Prosecution urges the court to affirm Sim's conviction for the Cheating Charges. With respect to the sentence imposed for the Cheating Charges, the Prosecution submits that a global sentence of 48–60 months' imprisonment is appropriate:

(a) The DJ failed to adequately consider that the Cheating Charges were carefully orchestrated and premeditated.

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8 Exhibit P61; ROP at p 4351.

9 Conviction GD at [44]; ROP at p 3375.

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(b) The DJ erred in giving too much weight to the absence of a specified loss for the Cheating Charges. Relatedly, the DJ erred in finding that Sim did not intend to cause financial harm to the banks.

(c) The DJ erred in giving Sim credit for his motivation to commit the 1st Cheating Charge when he was actually motivated by greed.

(d) The sentence imposed of 36 months' imprisonment was not supported by the sentencing precedents.

34 With respect to the Companies Act Charge, Sim's acquittal should be overturned as the DJ erred in finding that the loan of $535,000 in relation to the 1st Cheating Charge was an advance payment to Tati for the Twin Peaks project. According to the Prosecution, it was puzzling that the DJ rejected the Earmarking Defence, and yet the DJ accepted that the $535,000 was a legitimate advance payment to Tati.[10] Furthermore, even if the $535,000 was paid to Tati for another purpose on top of the acquisition of shares, the Companies Act Charge was still made out.

35 Tjioe's acquittal for the Abetment of Cheating Charges should be overturned. The Prosecution only needed to prove that Tjioe facilitated the primary offence, and that he knew about the essential elements of the primary offence. It was not necessary to prove that Tjioe knew the particulars of the arrangement between the banks and Sim, nor was it necessary to show that Tjioe knew that an offence was committed as a result of the improper use of the Supporting Documents. Further, it was irrelevant that the deposits were eventually used to pay for actual invoices of timber because the primary

[10] Prosecution's Written Submissions dated 5 February 2024 at [196].

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cheating offences were already committed long before the deposits were set off against actual invoices. The DJ also erred in not placing sufficient weight on Tjioe's police statements.

Sim's case

36 On appeal, Sim's case is essentially that the DJ wrongly rejected the two defences. The Consolidated Invoices Defence was borne out by the evidence. JPS had a longstanding practice of consolidating invoices when applying for financing, and the money was meant to reduce the outstanding amount owed by JPS to Tati. According to Sim, the 2nd to 4th Cheating Charges were not made out because:

(a) there was no deception practiced on the banks since the Supporting Documents were "genuine in substance but… inaccurately worded in form",[11] *ie*, that the underlying transactions were real since the Supporting Documents were a consolidation of past transactions between JPS and Tati;

(b) there was no evidence that the banks would not have disbursed the money if the underlying transactions in the Supporting Documents were genuine in substance but inaccurately worded in form; and

(c) Sim did not possess dishonest intention as he had no knowledge of his accounting department's practices, and his instructions were limited to a general direction to set off payments.

---

[11] Written submissions for Sim dated 5 February 2024 at [92].

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37 The DJ erred in rejecting the Earmarking Defence as there was compelling evidence that the timber, as described in the Supporting Documents, existed at the time of the Application. There was no deception since there was no requirement that the timber had to be physically delivered to JPS, before the bank approves the Application. Further, Sim genuinely believed that physical delivery was not a requirement for the loans. In respect of the 5th Cheating Charge, Sim could not have knowingly deceived the bank since he had minimal involvement in the IB Tower Project.

38 Sim argues that the aggregate sentence is manifestly excessive and that a global sentence not exceeding three months' imprisonment and a fine of $100,000 is appropriate:

(a) The DJ failed to accord sufficient weight to the fact that there was no loss caused to the banks. In fact, the DJ had accorded excessive weight to any harm done to the banks.

(b) The DJ erred in finding that the loans obtained by Sim were for extraneous purposes. The DJ failed to calibrate downwards the sentence imposed for the 2nd Cheating Charge, despite finding that there was no evidence that the cheated money was used for extraneous purposes for that charge.

(c) The DJ also failed to give adequate consideration to Sim's untraced record, good character and contributions to society.

(d) Finally, the DJ failed to accord weight to the fact that Sim had been diagnosed with generalised anxiety disorder with associated panic

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attacks, to the extent of being hospitalised for three days in 2015 due to the severity of the symptoms.

Tjioe's case

39 The appeal against acquittal should be dismissed as the DJ rightly found that Tjioe did not instruct Sally to prepare the fictitious invoices and delivery orders. Further, Tjioe did not intentionally aid Sim to cheat the banks since he had no knowledge of the arrangements between JPS and the banks. In particular, Tjioe did not know that actual delivery of goods was required for the Applications before the banks would disburse the money to Tati.

Issues to be determined

40 With respect to Sim's Cheating Charges:

(a) whether the banks were deceived, and relatedly, whether the Consolidated Invoice Defence and the Earmarking Defence are relevant and made out;

(b) whether the banks were induced by the deception;

(c) whether Sim harboured a dishonest intention, *ie*, that he knew the Supporting Documents were false and that delivery of the timber was a pre-condition for the bank to approve the Applications; and

(d) the appropriate sentence to be imposed on Sim.

41 With respect to Sim's Companies Act Charge:

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(a) whether there was financial assistance rendered that was in connection with the proposed acquisition of shares in JPH; and

(b) whether it is relevant that the financial assistance was given for an additional purpose on top of the proposed acquisition of shares in JPH.

42 With respect to Tjioe's Abetment of Cheating Charges:

(a) whether Tjioe facilitated the commission of the primary offence; and

(b) whether Tjioe possessed the requisite *mens rea* for the offence.

Sim's conviction for the Cheating Charges

43 I first consider Sim's conviction for the Cheating Charges. The elements of a cheating offence punishable under s 420 of the Penal Code are as follows: (a) the victim was deceived; (b) there was an inducement such that the victim delivered any property to any person; and (c) there was a dishonest or fraudulent intention on the part of the deceiving person to induce the victim to deliver the property (*Gunasegeran s/o Pavadaisamy v PP* [1997] 2 SLR(R) 946 ("*Gunasegeran*") at [42]–[44]). My analysis is broadly organised according to these three elements.

Deception

44 I first consider the element of deception. Deception is defined as the causing of another to believe what is not true (*Rahj Kamal bin Abdullah v PP* [1997] 3 SLR(R) 227 at [24]). The Supporting Documents indicated that a specified amount of timber, worth a specified value, was purchased and

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delivered to JPS on the given date. Further, in each delivery order, there was a statement, "[g]oods received in good order and condition", with Sim's signature (for all the Applications and delivery orders relating to the Cheating Charges, except the 2nd Cheating Charge where the delivery order was signed by Sim's brother and JPS's accounts manager, Ms Sophia Yap) and JPS's company stamp. The Supporting Documents would clearly cause another person to believe that the timber, of the specified type, value and quantity, was purchased and delivered as detailed in the invoices and delivery orders.

45 In my view, the element of deception is clearly made out. Not only is it undisputed that no timber as described in the Supporting Documents was delivered to JPS, but the Supporting Documents were completely made up. Sally admitted that the Supporting Documents which bore reference numbers with a "TT" prefix (*ie,* the Supporting Documents in relation to the 2nd to 5th Cheating Charges) were dummy invoices that she created to reflect the amount of money that JPS intended to deposit with Tati (the "TT-invoices"). The dummy invoices were created based on genuine invoices with the "A" prefix (the "A-invoices"). Using the subject matter of the 3rd Cheating Charge as an example, invoice TT-5895 was prepared based on invoice A5895.[12] In order to create the TT-invoices, Sally would delete the pallet numbers from the A-invoice and tweak the quantity and/or type of the timber specified in the A-invoice so that the total amount due to Tati in the TT-invoice would be exactly $500,000. According to Sally, Tjioe instructed her to prepare the Supporting Documents to reflect the amount that JPS intended to seek financing

[12] Compare invoice A5895 to invoice TT58985; ROP at pp 4612 and 3789.

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for so that Tati could be paid.[13] Sally adopted a similar method to create the Supporting Documents for all the five Cheating Charges.

46 The circumstances for the 1st Cheating Charge are slightly different. The Supporting Documents were made up by Sally even though they bore a reference number with the "A" prefix. Sally mistakenly issued an A-invoice when it should have been a TT-invoice. As a result, a payment of $535,000 was wrongly credited against JPS's running account with Tati, when it should have been accounted for as a *deposit of $500,000*. Sally mistakenly included, in the invoice, a goods and services tax ("GST") component amounting to $35,000 even though there was no GST payable since no such timber as specified in the delivery order had been delivered to JPS.[14] This was later rectified and the sum of $535,000 was recorded as a deposit after Tjioe spotted the error. As such, all the Supporting Documents in relation to the five Cheating Charges were dummy documents created by Sally to reflect the amount of money JPS intended to deposit with Tati. The significance of the fact that Tjioe was the one who spotted the error becomes evident when assessing Tjioe's knowledge of the primary offence. I return to this point later.

47 Finally, as the Prosecution outlined, there are multiple key differences between the genuine invoices and the dummy invoices which reveal that the Supporting Documents were all fictitious documents created for the sole purpose of obtaining financing from the banks:[15]

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13 Notes of Evidence ("NEs") day 9 page 45 lines 12 to 15; ROP at p 1135.

14 NEs Day 9 p 34 line 30 to p 35 line 1; ROP at p 1124 to 1125.

15 See example of genuine invoice and delivery order at Exhibit P8; ROP at pp 3560 to 3568.

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(a) Genuine invoices and delivery orders included the purchase order number and pallet number of the timber purchased, which allowed JPS employees to verify the quantity, type and dimensions of the timber. The purchase order number and pallet numbers were missing from the Supporting Documents. This corroborates Sally's claim that she removed information such as the pallet numbers from the genuine A-invoices to create the dummy invoices.

(b) Genuine invoices and delivery orders were accompanied by a packing list so that JPS employees could verify that the timber from Tati corresponded to the order and were in good condition. There was no packing list that accompanied the Supporting Documents.

(c) The genuine invoices and delivery orders indicated sums due to Tati that were up to two decimal places. This was because the timber was measured in square feet with decimal points, and it was impossible for an amount due to Tati to be a round number. In the Supporting Documents, the amount due to Tati were all round numbers (e.g., $200,000, $300,000 and $500,000).

(d) The dates of the genuine invoices and delivery orders were indicated by Tati employees, and the dates reflected the actual date that the document was issued. In comparison, the date was stamped by JPS employees on the Supporting Documents, and reflected the date that the loan applications to the banks were made.

The Consolidated Invoice Defence

48 The Defence submits that, although the Supporting Documents were "inaccurately worded", they were not "fictitious" since the invoices represent

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genuine underlying transactions.[16] First, I find that the invoices do not reflect genuine underlying transactions. I agree with the DJ that the Consolidated Invoice Defence was not borne out by the evidence. A genuine consolidated invoice and delivery order, A5894, was adduced as Exhibit P64. A5894 included a purchase order number and pallet numbers, and the total amount due to Tati was shown up to two decimal places as "88,493.56". None of these features are present in the Supporting Documents. As explained, without identifiers such as the pallet and purchase order number, it would be impossible for parties to trace the payment to past invoices or deliveries. Indeed, Sim was not able to point to any past genuine transactions that were supposedly consolidated into the Supporting Documents.

49 Most crucially, as the DJ also correctly noted,[17] the disbursements from the bank for the Applications did not go towards the payment of any past invoices but were instead recorded as a "deposit" in Tati's account and used to pay *future* invoices that were unrelated to the Supporting Documents. In comparison, the payment for a genuine consolidated invoice, A5894, was credited to Tati's account directly as payment for the invoice.[18] In the circumstances, it is clear the Supporting Documents in relation to the 2nd to 4th Cheating Charges did not reflect a consolidation of past genuine transactions.

50 In any event, regardless of whether the Supporting Documents reflected genuine transactions, the Supporting Documents were deceptive. The Supporting Documents represented that a certain amount and value of timber

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16 Written Submissions for Sim dated 5 February 2024 at [73].

17 Conviction GD at [34]; ROP at p 3371.

18 Exhibit P62; ROP at pp 4449 to 4453.

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was delivered on a specified date, which is plainly different from the Defence's assertion that there were multiple transactions over different dates consolidated into a single invoice and delivery order.

51 The Defence's argument that the Supporting Documents were genuine in substance but inaccurately worded in form is irrelevant to the analysis of the element of deception. The Defence's attempt to draw a distinction between "inaccuracy" and "fiction" is one that is important to the *intention* behind the falsity of the Supporting Documents, rather than the falsity itself. "Inaccuracy" connotes that the falsity was accidental and/or that one did not intend to be dishonest, while "fictitious" connotes an intention to be dishonest. In other words, this distinction is only relevant to the element of dishonesty for the Cheating Charges. In sum, regardless of whether the Supporting Documents are better described as "inaccurate" or "fictitious", the reality is that the Supporting Documents would and did deceive the banks into believing that the timber was purchased and delivered as detailed in the Supporting Documents.

The Earmarking Defence

52 The Defence argues that, with respect to the 1st and 5th Cheating Charges, there was no deception since the timber as described in the Supporting Documents did exist and were earmarked for JPS. I find that the DJ correctly rejected this defence as well. First, there is no evidence adduced of any earmarking. According to Sim, there is no written record of earmarking as he memorised the specific types, dimensions and quantity of timber that he wanted from Tati's warehouse. It is simply not believable that Sim would only rely on his memory, with no written record, to account for the type, dimensions, and other specifics of large purchases of timber that amounted to hundreds of thousands of dollars in value. None of Sim's employees were aware that he had

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purportedly earmarked large amounts of timber in Tati's warehouse. Even Tjioe testified that he "[doesn't] earmark goods", though he accepted that "if the customer earmarked, it's the customer",[19] which, according to Sim, revealed that it is possible that *the customer* earmarked the timber even if Tjioe did not earmark them himself. Even by taking this account at its highest, I am unable to see how "earmarking" amounts to "constructive delivery" for the purposes of an Application to the bank for post-shipment financing. It merely appears that, at best, Sim unilaterally set aside the goods for himself without anyone's knowledge.

53 Next, I agree with the DJ that the timber, as described in the Supporting Documents in relation to the 1st and 5th Cheating Charges, did not exist. I first consider the 1st Cheating Charge and the Defence's argument that the timber was for the Twin Peaks project. The timber described in the purchase order for the Twin Peaks project ("Engineered Oak (Wire Brush)") is different from the timber described in invoice A5532 ("Engineered Oak Pre-finished"). The $535,000 deposit was then set-off against different and unrelated invoices approximately *two years* after the deposit was credited to Tati. Further, it was highly unlikely that Sim would pay $535,000 to Tati before JPS was formally awarded the Twin Peaks project and before JPS had issued a purchase order to Tati for the timber. There was no reason for JPS to deposit money with Tati to secure the timber, particularly since, as Sim admitted, JPS faced cash flow challenges and Tati consistently gave JPS more than 30 days after the delivery date to pay for goods.

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19 NEs Day 23 p 138 lines 17 to 25; ROP at p 2824.

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54 With respect to the 5th Cheating Charge, I find that there is no evidence that the timber specified in the Supporting Documents was earmarked for the IB Tower Project. No other witness testified that invoice TT-6086 was related to the IB Tower Project. In fact, the purchase order number for the IB Tower Project (PO00001568) was completely different from the purchase order number in invoice TT-6086 (PO00001696). The specifics of the timber ordered for the IB Tower Project were also completely different from the order detailed in TT-6086.[20] I agree with the Prosecution that Sim lied about the fact that he had earmarked timber in relation to the IB Tower Project for the 5th Cheating Charge.

55 In any event, as found earlier, Sally admitted to creating dummy invoices for the purposes of obtaining payment. If the goods described in the Supporting Documents did not exist, there could not have been notional or constructive delivery of the same. Accordingly, I reject the Consolidated Invoice Defence and the Earmarking Defence, and find that the Supporting Documents were deceptive and that the banks were deceived.

Inducement

56 In the context of deceiving corporate bodies such as the banks in the present case, it is sufficient for the Prosecution to show that the bank's processes were utilised to induce the bank to act in a manner that it would not have acted if the representation was not made (*Leck Kim Koon v PP* [2022] 3 SLR 1050 at [28]). This element of the Cheating Charges is clearly proven. It was shown that the banks would not have disbursed the moneys to Tati if they knew that no goods were delivered as described in the Supporting Documents. The

[20] Compare Exhibit P25 and Exhibit D13; ROP at pp 3937 and 5903.

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representatives from the banks testified that there must be delivery of the goods to JPS before the banks would disburse the money to Tati. The representatives also confirmed that, if the banks had known that the goods were not delivered as described in the Supporting Documents, the banks would not have approved the Applications.[21]

57 The Defence argues that there is no evidence that the banks would not have disbursed the loans if "the underlying transactions in the application documents were genuine in substance but the items were inaccurately worded in form".[22] First, as I found earlier, the Supporting Documents were fictitious in both form and substance. Second, the Defence's argument is a red herring. With respect to the element of inducement, it is immaterial that the Supporting Documents were substantively genuine. The reason that the banks requested particular accompanying documents for the Applications is precisely because they intended to rely on the *form* of these documents, *ie*, the information provided on the face of the documents. The banks would not know, and could not have known, whether the Supporting Documents reflected genuine underlying transactions in substance despite their form. In the present case, the banks indeed relied on the information within the Supporting Documents, and acted in a manner that they otherwise would not have by disbursing the money to Tati. The element of inducement is made out.

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21 NEs Day 9 p 77 lines 4 to 9 (DBS, PW11), Day 11 p 8 line 31 to p 9 line 4 (DBS, PW15), Day 9 p 122 lines 5 to 7 and p 143 line 31 to p 144 line 14 (SCB, PW12), Day 9 p 153 line 28 to p 154 line 1 (SCB, PW13) and Day 7 p 11 lines 18 to 25 (Maybank, PW9), Day 6 p 7 line 28 to p 8 line 9 (Maybank, PW7); ROP at pp 1167, 1313 to 1314, 1212, 1233 to 1234, 1243 to 1244, 823 and 689 to 690.

22 Written Submissions for Sim dated 5 February 2024 at [92].

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Dishonesty

58 I now turn to consider the element of dishonesty. I find that Sim possessed the dishonest intention to cheat the banks. Sim was plainly aware of the fact that the Supporting Documents were false representations. As explained earlier, the Supporting Documents had no packing list, pallet numbers or purchase order number and it would have been impossible for Sim, or any of JPS's employees, to trace the timber to a particular transaction in order to verify that the timber was received in good order and condition.

59 It is undisputed that, usually, Chit Ko Ko Htut ("Chit Ko"), the storeman for JPS at the material time, was the one who inspected and verified that the timber was received in good order and condition by checking against the packing list. Chit Ko then signed against the delivery orders after inspection. The delivery orders would be sent to the accounting department in JPS for filing, and Tati would follow up by issuing an invoice to JPS. However, the five delivery orders that are the subject of the Cheating Charges were signed by Sim or his brother and Sophia Yap instead. Chit Ko testified that he had never seen orders bearing reference numbers with the "TT" prefix.[23]

60 Despite it being impossible to verify that the timber orders were received in good order and condition, Sim signed on four of the five delivery orders that are subject to the Cheating Charges, authorised all the Applications to the bank, and instructed Sophia Yap to record these payments by the bank to Tati as deposits.[24] I note that, with respect to the 2nd Cheating Charge, it was Sophia Yap and Sim's brother who signed on the delivery order to confirm that the

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[23] NEs Day 2 p 122 lines 9 to 30; ROP at p 337.

[24] Exhibit P54 at Q267; ROP at p 4101.

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timber was received in good order and condition. Regardless, it was still Sim who authorised the Application to the bank.[25] Contrary to Sim's claim that he had no knowledge of his accounting department's practices, Sophia Yap testified that it was Sim who instructed the JPS accounting employees regarding which supplier to pay, how much to pay and which bank's facility to use.[26] Sim also admitted that he had a practice with his suppliers, including Tati, of paying deposits *in advance of* delivery to secure goods and/or prevent fluctuations in price.[27] It is clear that Sim was aware that the deliveries had not actually taken place.

61 Furthermore, the deposits were then used to set off *future* invoices after the relevant Applications. The direction to set-off the deposits came months after the respective Applications, and against invoices that were dated after the Applications. In fact, the deposits with Tati with respect to the 1st and 3rd to 5th Cheating Charges were used for extraneous purposes:

(a) The $535,000 disbursed to Tati as part of the 1st Cheating Charge can be traced to Tjioe's personal subscription of JPH's shares.

(b) The $700,000 disbursed to Tati as part of the 3rd and 4th Cheating Charges can be traced to Tjioe's investment in JPH's convertible bonds.[28] Eventually, JPH aborted the issuance of convertible bonds and the money was refunded to Tati.

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25 SOAF at [6]; ROP at p 38.

26 NEs Day 4 p 67 lines 8 to 23; ROP at p 450.

27 Exhibit P59 at Q551 and Q557; ROP at pp 4164 to 4166.

28 Exhibit P23 and Exhibit P56 at Q437 and Q439; ROP at p 3815 and pp 4137 to 4138.

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(c) The $500,000 disbursed to Tati as part of the 5th Cheating Charge can be traced to a personal loan from Tjioe to Sim.[29]

62 Sim argues that he did not know that physical delivery of the goods was a condition of the banks' invoice financing. He assumed that earmarking of the goods was sufficient for invoice financing and, as such, he did not knowingly deceive the banks. However, as explained above, there is no evidence of any earmarking. For completeness, I note that Sim highlighted the evidence of Mr Alex Chua ("Alex"), the relationship manager from DBS for JPS from 2004 to 2010, that DBS would have permitted customers to apply for invoice financing for earmarked goods or consolidated invoices if JPS successfully sought approval from DBS's credit approval committee.[30] I place no weight on this, as Alex was not an employee of DBS at the material time of the offences. The DBS employees who handled DBS' invoice financing facility with JPS at the material time testified consistently that DBS would not have accepted earmarked goods or a consolidated invoice for the purposes of financing. In any event, even when taking Alex's evidence at its highest, there is no evidence that Sim obtained prior approval from DBS to finance earmarked goods and consolidated invoices. Alex's evidence also does not assist Sim with respect to the other Cheating Charges concerning SCB and Maybank.

Sim's sentence for the Cheating Charges

63 I now turn to the appeal and cross-appeal against the sentence imposed on the Cheating Charges by Sim and the Prosecution respectively.

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29 Annex A of the Prosecution's Closing Submissions dated 11 January 2023; ROP at p 4906.

30 NEs Day 28 p 64 line 21 to p 65 line 8 and p 47 lines 2 to 11; ROP at pp 3162 and 3179 to 3180.

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64 It is clear that general deterrence is the primary sentencing consideration in cases, such as the present, which entail the misuse of a financial instrument or facility which threatens the conduct of legitimate commerce (*Idya Nurhazlyn bte Ahmad Khir v PP* [2014] 1 SLR 756 at [48]). The credit extended by banks is a vital lifeline for businesses. I agree with the Prosecution that a deterrent sentence is warranted to prevent offences like the present from pervading Singapore's financial ecosystem, which may lead to banks imposing stricter rules of compliance or withdrawing their trade financing services entirely.

65 The difficulty in detecting invoice financing fraud is also another reason that warrants a deterrent sentence. Indeed, on the present facts, the offences came to light in 2016, which is at least three years after the 1st Cheating Charge occurred. The case was referred to the police only after trading in the shares of JPH was suspended, its internal auditors highlighted potential overstatement in JPH's profits and losses, and an external audit was conducted.[31]

Offence-specific factors

66 With the above in mind, I now turn to consider the relevant offence-specific factors:

(a) the sum of money cheated and, relatedly, the harm caused to the banks;

(b) the extent of planning and premeditation involved; and

(c) Sim's motive for committing the offences.

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31 Exhibit D8; ROP at pp 5881 to 5884.

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(1) The amount of money cheated

67 The DJ correctly observed that the amount involved in the present matter was large ($2,035,000), although there appears to be no financial loss sustained by the banks since JPS repaid the loans with respect to the Cheating Charges. Nonetheless, as the DJ also noted, one cannot look at the material loans in silos to determine if the banks suffered harm. This is because JPS had a practice of rolling over bank loans to pay the loans that fell due. Indeed, JPS was liquidated and had multiple outstanding loans with the banks as of the time of sentencing in the court below: $1.34 million with Maybank and $1.2 million with SCB. Only DBS managed to mitigate its losses by exercising its rights over a mortgage on JPS property.[32] I am mindful that it is difficult to quantify the financial harm caused to the banks *as a direct result of* the Cheating Charges. Nevertheless, it cannot be said that there was no financial loss sustained by the banks.

68 However, the DJ wrongly gave weight to the fact that Sim did not intend to cause financial harm to the banks. It follows, from Sim's dishonest intention to cheat the banks, that he intended to cause the banks financial harm by placing them at risk of exposure. In the present case, there were no genuine underlying transactions to the Applications and Supporting Documents. Sim also admitted that he had cash flow difficulties and occasionally could not pay his staff their salaries on time. JPS had multiple financing facilities with different banks precisely to meet these cash flow challenges.[33]

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32 NEs Day 9 p 78 line 22 to p 79 line 7; ROP at pp 1168 to 1169.

33 NEs Day 17 p 66 lines 22 to 27; ROP at p 2077.

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69 The facilities in the present case were not secured by the goods indicated in the Supporting Documents. Sim argues that the risk of exposure was mitigated since he had personally guaranteed the loans from the banks. However, there appears to be no evidence that Sim stood as a personal guarantor for the loans from the banks, except for DBS. In any event, I find that Sim's personal guarantee did not diminish the fact that there was a risk of exposure that the banks were not aware of and did not agree to bear.

(2) Extent of planning and premeditation

70 Next, I find that there was an extent of planning and premeditation involved in the offences. The DJ wrongly concluded that the offences were not carefully orchestrated on the mere basis that Sim did not provide instructions on the false information provided in the Supporting Documents. In this regard, I accept the Prosecution's submission that the gravamen of Sim's role in the scheme was his *improper use* of the Supporting Documents, rather than the *preparation* of the Supporting Documents. There was clear planning and premeditation on Sim's part: Sim knew the Supporting Documents were false, authorised the Applications to the bank and then instructed his staff to record the payments to Tati as deposits. The offences were orchestrated between Sim, Tjioe and their respective staff, such that JPS obtained extra cash flow and Tati received payment from JPS.

(3) Sim's motives for the Cheating Charges

71 Sim's motive behind all the Cheating Charges was clearly for personal benefit. He committed the various offences to facilitate the purchase of JPH's shares and convertible bonds, financing for future invoices, a personal loan from

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Tjioe, or to obtain cash flow for JPS. There is no evidence that Sim committed the offences to save the company like in *Tan Thiam Wee*.

72 In my view, the DJ erred in finding that the 1st Cheating Charge was not committed for Sim's personal benefit since it was to expand JPH's reach abroad after the IPO. It is clear that Sim stood to benefit personally if JPH expanded overseas and did well.

Offender-specific factors

73 In my view, there are no relevant offender-specific factors. The DJ correctly placed no mitigating weight on the Appellant's lack of antecedents, good character and contributions to society. The lack of antecedents is simply the absence of an aggravating factor. I note that an offender's good conduct and clean record may be relevant in showing that the offences were out of character and thus reduce the need for *specific* deterrence (*Leong Sow Hon v PP* [2021] 3 SLR 1199 at [70]). However, it is undisputed that specific deterrence was not applicable to the present case.

74 I find that the DJ correctly placed no weight on Sim's medical condition as a mitigating factor. Sim was diagnosed with generalised anxiety disorder with associated panic attacks. He was hospitalised for three days in 2015 due to the severity of his symptoms. As set out in *Chew Soo Chun v PP and another appeal* [2016] 2 SLR 78 ("*Chew Soo Chun*") at [30]–[33], ill health can have a mitigating effect on a sentence by decreasing the culpability of the offender, or by causing imprisonment to have a disproportionate impact on the offender. The present case is concerned with the latter effect. I find that there is no evidence that Sim's medical condition would cause the term of imprisonment to have a markedly disproportionate impact on him (*Chew Soo Chun* at [38]).

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The global sentence

75 Based on my findings above and the sentencing precedents cited by parties, I agree with the Prosecution that the sentence imposed by the DJ is manifestly inadequate. I impose the following sentences, which feature an uplift from those imposed by the DJ:

Cheating Charges	Amount involved ($2,035,000 in total)	Sentence imposed by the DJ	Sentence imposed on appeal
1st Charge (DAC-924315-2018)	$535,000 (DBS)	16 months' imprisonment	**19 months' imprisonment**
2nd Charge (DAC-924316-2018)	$300,000 (SCB)	9 months' imprisonment	**12 months' imprisonment**
3rd Charge (DAC-924317-2018)	$500,000 (Maybank)	15 months' imprisonment (Consecutive)	**18 months' imprisonment (Consecutive)**
4th Charge (DAC-924318-2018)	$200,000 (SCB)	6 months' imprisonment (Consecutive)	**8 months' imprisonment (Consecutive)**
5th Charge (DAC-924319-2018)	$500,000 (DBS)	15 months' imprisonment (Consecutive)	**18 months' imprisonment (Consecutive)**
Global sentence		36 months' imprisonment	**44 months' imprisonment**

76 The aggregate sentence of 44 months' imprisonment is supported by the sentencing precedents. I take particular reference from the case of *Chew Soo Chun* as this case was affirmed on appeal in a three-Judge coram and also

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features multiple similarities to the present case. *Chew Soo Chun* is also a case involving the fraudulent use of invoice financing. The offender would have been sentenced to a global sentence of a $10,000 fine and 38 months' imprisonment, if not for a six-month sentencing discount on the basis of ill-health (which is not a relevant factor in the present case).

77 There are a few key similarities between *Chew Soo Chun* and the present case. Both cases involved a sum of more than $2 million. In *Chew Soo Chun*, the amount cheated was higher, at roughly $2.6 million, and there was approximately $932,000 in actual loss caused to the bank. In the present case, there is unascertainable loss caused to the banks. JPS entered into liquidation and still owes sizeable debts to the banks ($1.34 million to Maybank and $1.2 million to SCB) as a result of their practice of rolling loans over. Furthermore, both the offender in *Chew Soo Chun* and Sim committed the offences for personal gain and there was a degree of planning and premeditation in both cases.

78 The offender in *Chew Soo Chun* pleaded guilty and was entitled to a sentencing discount. There were 23 other cheating charges under s 420 of the Penal Code taken into consideration. In that case, the offender was sentenced to 14 to 16 months' imprisonment for each of the three cheating offences under s 420, for amounts cheated from the bank that varied between approximately $160,000 to $174,000. Conversely, Sim claimed trial and is not entitled to a sentencing discount. I also note that there are no charges taken into consideration in the present case. As such, I find that a sentence of 19 months' imprisonment imposed for the 1st Cheating Charge is fair and corresponds to the quantum cheated from DBS for that particular charge ($535,000). I adjust the sentences imposed for the 2nd to 5th Cheating Charges accordingly, such that the

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individual sentences for the five Cheating Charges correspond approximately to the quantum cheated.

79 I agree that three of the five charges should run consecutively in view of the fact that there were three distinct banks that fell victim to Sim's offences.

Sim's Companies Act Charge

80 I first set out the relevant provisions of the Companies Act:

> s 76(1)(*a*)(ii)(B): "Except as otherwise expressly provided by this Act, a company shall not whether directly or indirectly, give any financial assistance for the purpose of, or in connection with the proposed acquisition by any person of shares or units of shares in a holding company of the company."
>
> s 76(5): "If a company contravenes subsection (1), the company shall not be guilty of an offence, notwithstanding section 407, but each officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 or to imprisonment not exceeding 3 years or to both."
>
> s 408(3): "For the purposes of any provision of this Act which provides that an officer of a company or corporation who is in default is guilty of an offence under this Act or is liable to a penalty or punishment, the phrase "officer who is in default" or any like phrase means any officer of the company or corporation who knowingly and wilfully (*a*) is guilty of the offence; or (*b*) authorises or permits the commission of the offence."

81 In the present case, the Prosecution has to show that: (a) JPS provided indirect financial assistance to Tjioe; (b) the financial assistance was in connection with the proposed acquisition of shares in JPH; and (c) Sim knowingly and wilfully authorised the payment of $535,000 to Tati. I had earlier found that Sim knowingly and wilfully authorised the Applications to the bank and the payment of $535,000 to Tati in relation to the 1st Cheating Charge.

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JPS provided financial assistance

82 The Defence argued that the $535,000 received by Tati from DBS is not a company asset of JPS *per se*, and it therefore cannot constitute "financial assistance" by JPS. No authority was cited for this proposition. In my view, this is simply not the case. The ambit of "financial assistance" is wide (*PP v Lew Syn Pau & Anor* [2006] 4 SLR(R) 210 ("*Lew Syn Pau*") at [152]). This is supported by a plain reading of s 76(2): "the giving of financial assistance includes a reference to the giving of financial assistance by means of the making of a loan, the giving of a guarantee, the provision of security, the release of an obligation or the release of a debt *or otherwise*" [emphasis added]. To establish that JPS had given financial assistance, it must be shown that the assets of the company had been depleted, in the sense that the assets have been used or put at risk for the purpose of the intended acquisition (*Lew Syn Pau* at [107] and [151]). In the present case, the assets of JPS were depleted and put at risk for the purpose of the intended acquisition when Tati received the $535,000 from JPS through DBS's financing facility at the time of JPH's IPO and JPS incurred a debt of $535,000 to DBS.

83 The reference to "indirect" financial assistance in s 76(1)(*a*)(ii)(B) of the Companies Act indicates that the Prosecution need not demonstrate a single, direct, uninterrupted causal link between JPS and the recipient of the financial assistance (*Lew Syn Pau* at [170]). Ultimately, the inquiry is directed at the substance and not the form of the transaction (*Lew Syn Pau* at [170]). In the present case, it is clear that the recipient of the financial assistance was Tjioe. When Tati received $535,000 from JPS (through the bank's financing facility), a cheque for the same amount was issued by Tati to Tjioe a day later.

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84 I am mindful that a transaction will not be construed as the giving of financial assistance, even if the result is to financially enable the acquisition, if the company is already subject to an obligation that has crystallised and is simply performing that obligation in the context of an intended acquisition of shares (*Lew Syn Pau* at [145]). Put simply, if JPS was repaying a debt due to Tati when the $535,000 was paid to Tati, even if this was in the context of an intended acquisition of JPH's shares, the repayment does not fall within the scope of "financial assistance" pursuant to s 76 of the Companies Act. However, in this case, the $535,000 was not used by JPS to repay an obligation that had crystallised at the time of the financial assistance. When the $535,000 was disbursed to Tati, it was classified as a "deposit" and the money was then used to pay *future* invoices as identified in the contra notes.

85 As such, the DJ was wrong to acquit Sim on the mere basis that the $535,000 was also for a deposit or advance payment for the Twin Peaks Project. There is no evidence that the $535,000 was intended to be a deposit for the Twin Peaks Project, and, in any event, it was not used to repay an obligation that had already crystallised at the time the financial assistance was rendered.

The financial assistance was given in connection with an acquisition

86 Based on s 76(4)(*a*) of the Companies Act, JPS is taken to have given financial assistance in connection with an acquisition if, when the financial assistance was given to Tjioe, it was aware that the financial assistance would financially assist the acquisition by a person of shares in the company. I set out the provision for reference:

> s 76(4)(*a*): "For the purposes of this section, a company shall be taken to have given financial assistance in connection with an acquisition or proposed acquisition referred to in subsection (1)(a) if, when the financial assistance was given to a person,

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> the company was aware that the financial assistance would financially assist the acquisition by a person of shares or units of shares in the company".

87 I find that JPS was aware that the $535,000 would financially assist the acquisition by Tjioe of the shares in JPH. Sim was the CEO, shareholder, and board director of JPH, and was also the one who informed JPS's suppliers, including Tjioe, about the IPO and recommended they purchase the shares. Sim was aware that Tjioe intended to acquire the shares in the upcoming IPO for JPH. All the placees of JPH's shares, including Tjioe, were affiliated with JPS's suppliers or contractors.

88 Sim was the director and CEO of JPS as well. At around the time that JPH's IPO was going live, Sim authorised the Application to the DBS and gave instructions for the $535,000 to be recorded as a "deposit" with Tati. Shortly after the Application was submitted and approved, the money was disbursed through JPS's financing facility with the bank and Tati received the $535,000. A day later, Tati issued a cheque of the same amount to Tjioe. Tjioe then deposited the cheque into his personal bank account and made payment of $568,523.75 to subscribe for the shares in JPH. As such, based on the timeline of the events that transpired, JPS would have known that the $535,000 was at risk of being used for the acquisition. In the circumstances, I find that the Companies Act Charge is made out against Sim.

89 For completeness, I note that s 76(16) of the Companies Act provides that the reference to the "proposed acquisition" of shares includes the subscription of shares like in the present case.

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Tjioe's Abetment of Cheating Charges

90 In proving the Abetment of Cheating Charges, the Prosecution must show that Tjioe (a) did something which facilitated the commission of the Cheating Charges (the primary offence); and that (b) he had knowledge of the circumstances of the primary offence (*Bachoo Mohan Singh v PP* [2010] 4 SLR 137 at [111]). Tjioe must be shown to have at least known the *essential* matters which constituted the offence. However, it is not necessary to prove that Tjioe knew an offence was committed as a result of the fictitious invoices, as that would be tantamount to an acceptance of ignorance of law as a defence (*Nomura Taiji v PP* [1998] 1 SLR(R) 259 ("*Nomura Taiji*") at [107]). It is thus clear that the DJ erred in acquitting Tjioe on the basis that Tjioe did not know that Sim had committed an offence through the improper use of the Supporting Documents.[34]

Tjioe facilitated the commission of the Cheating Charges

91 Tjioe facilitated the commission of the Cheating Charges by instructing Sally to prepare fictitious invoices. Even though Sally personally prepared the Supporting Documents and decided which fictitious details to include, she was acting on Tjioe's instructions to prepare the Supporting Documents for the purpose of helping JPS to obtain bank financing. In particular, Sally testified that Tjioe instructed her to leave the Supporting Documents undated, and to ensure that they reflect the amount that JPS intended to seek financing for so that Tati could be paid.[35] Neither Tjioe nor Sim were able to provide any reason why Sally would otherwise create dummy invoices in such a manner, other than

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34 Conviction GD at [50]; ROP at 3377.

35 NEs Day 9 p 40 lines 19 to 26 and p 45 at lines 7 to 18; ROP at pp 1130 to 1135.

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to assert that she must have been lazy. There is no basis for that assertion. Indeed, Sally was still working at Tati at the time of the trial.

92 Sally's evidence that Tjioe was providing instructions with respect to the dummy invoices was corroborated by Ms Rainie Teoh ("Rainie"), another employee involved in JPS's accounting. In respect of the 2nd Cheating Charge, Rainie testified that she took instructions directly from Tjioe as to when and how JPS and Tati would set-off the S$300,000 which had been paid to Tati by SCB. On the Supporting Documents, Rainie wrote a contemporaneous record of Tjioe's instructions to her, stating that she had "double confirm[ed] with Mr Chew [*sic*] that this is a deposit", and to "wait for Mr Chew [*sic*] instructions to offset with the deposit amount after a few months".[36]

93 Furthermore, it is undisputed that Tjioe authorised all the Supporting Documents issued by Tati in the Cheating Charges. He also signed off on all the Supporting Documents, except for the ones in relation to 2nd Cheating Charge which Sally signed off on. Tjioe then personally hand-delivered the Supporting Documents to JPS. Without these Supporting Documents, JPS would not have been able to obtain the financing from the banks and commit the primary offence.

Tjioe knew of the essential elements constituting the offence

94 Tjioe also knew of the essential elements constituting the offence. Firstly, in view of Tjioe's instructions to Sally, it is clear that he knew that the Supporting Documents were false representations. Tjioe instructed her to leave the Supporting Documents undated, and to ensure that they reflect the amount

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[36] Exhibit P15; ROP at p 3632.

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that JPS intended to seek financing for so that Tati could be paid. He also knew that these payments were recorded as "deposits" where no actual goods were delivered to JPS. As I noted earlier, Tjioe was the one who corrected Sally when one of the invoices was mistakenly credited against JPS's running account with Tati, when it should have been a deposit instead. In fact, in order to rectify the error in invoice A5532 with respect to the 1st Cheating Charge, Tjioe sent a text message to Sim on 22 February 2013 stating: "Jason can we meet to discuss and clarify with your account [*sic*] on the $500,000 *deposit*? I have some problem with my accounting here" [emphasis added].[37] Tjioe clearly referred to the payment as a $500,000 *deposit*.

95 Furthermore, Tjioe admitted in his police statement that he knew how the fraudulent scheme operated. It is clear that Tjioe knew that the Supporting Documents were false representations and that they were used by JPS to apply for financing from the banks. Tjioe agreed to provide JPS with the Supporting Documents so that Tati could be paid:[38]

> "Actually our invoice number don't start with "TT-", it starts with "A". **All invoice that start with "TT" was specially prepared for JPS to get financing from the bank, because they need an invoice from us to get financing from the banks.** For TT invoice the Ref/No, D/O no, P.O, product description and the quantity is something that Sally just put in they will not link to an actual invoice and delivery. However, we do have actual invoice and deliveries to JPS. We will use the monies that we received from them to contra off the amounts they owe us for these invoices. The TT invoices are prepared upon JPS accounts personnel request. **Xiao Xiao or Sophia will inform me that JPS can pay a certain amount and Tati will issue an invoice with the corresponding amount. I will hand deliver this invoice to give to JPS account.** I believe on JPS own accounts side they do not actually record the TT invoices as well, they will also contra off the amount they owe

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37 Exhibit D34 (TAT-011-001); ROP at p 6331.

38 Exhibit P61 at Q46; ROP at pp 4340 to 4341.

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> to us for actual goods delivered. **The TT invoices are only for the bank financing.**
>
> **We do this because if not we will not get paid**. I believe all other suppliers also do this.
>
> [emphasis added in bold]

96 The DJ did not appear to place any weight on Tjioe's admissions in his statement since Tjioe's statements were recorded in August 2016 and after the Ernst & Young investigations. According to the DJ, this meant that Tjioe came to know the information after the fact. With respect, I disagree with this reasoning. As correctly pointed out by the Prosecution, Tjioe's statements were admitted into evidence by consent. There is also no indication within the statements that any of Tjioe's answers were not within his own personal knowledge.

97 Next, it is unnecessary for Tjioe to be aware of the nature of the facility agreement between the Sim and the banks in order to be convicted for the Abetment of Cheating Charges. As held in *Nomura Taiji* at [110], the test for guilt of the abettor is whether, having regard to the immediate object of the conspiracy, the act done by the principal is one which, according to ordinary experience and common sense, the abettor must have seen as foreseeable. Tjioe knew that the dummy invoices were being used by JPS to obtain loans from the banks and that JPS did obtain the corresponding loans. It must have been foreseeable to Tjioe that JPS was using the fictitious Supporting Documents to obtain financing from the banks. It is irrelevant that Tjioe was unaware of the precise terms of the facility between JPS and the banks as the Prosecution did not need to prove that Sim and Tjioe were equally informed as to the details.

98 Finally, it is irrelevant that JPS and Tati had a running account and that the deposits were eventually used to pay legitimate invoices. Tjioe facilitated

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the commission of the Cheating Charges by instructing Sally to prepare the fictitious invoices, and he had done so with the full knowledge that the invoices were false representations to the banks to disburse moneys to Tati according to the amount specified in the Supporting Documents. It did not matter that the money was later used for legitimate transactions, since the money was already obtained improperly.

Conclusion

99 In summary:

(a) With respect to MA 9143/01, I dismiss Sim's appeal against conviction and sentence for his Cheating Charges.

(b) With respect to MA 9143/02, I allow the Prosecution's cross-appeal against Sim's sentence for the Cheating Charges. Sim's aggregate sentence is enhanced from 36 months' imprisonment to 44 months' imprisonment.

(c) With respect to MA 9077, I allow the Prosecution's appeal and convict Sim of the Companies Act Charge.

(d) With respect to MA 9078, I allow the Prosecution's appeal and convict Tjioe of the Abetment of Cheating Charges.

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100 I will now give directions for the filing of written submissions by parties on the appropriate sentences for Sim's Companies Act Charge and Tjioe's Abetment of Cheating Charges.

Vincent Hoong J
Judge of the High Court

Kevin Yong and Tan Zhi Hao (Attorney-General's Chambers) for the Prosecution;
Navindran Naidu, Lynn Cheng and Chloe Chen (Dentons Rodyk & Davidson LLP) for Jason Sim Chon Ang;
Shashi Nathan, Jeremy Pereira and Carmen Lee (Withers KhattarWong LLP) for Tjioe Chi Minh.

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