

**IN THE SUBORDINATE COURTS OF THE REPUBLIC OF SINGAPORE**

**[2007] SGDC 215**

DAC No. 46409 of 2004 & Ors

Magistrate's Appeal Nos. 143/2007/01

Between

Ian Huang Yuan Yuan

... Appellant

And

Public Prosecutor

... Respondent

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**GROUNDS OF DECISION**

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**Ian Huang Yuan Yuan**  
**v**  
**Public Prosecutor**

**[2007] SGDC 215**

District Court — DAC No. 46409 of 2004 & Ors  
District Judge Francis Tseng  
9 March 2007

3 August 2007

**District Judge Francis Tseng:**

This is an appeal against sentence by the accused.

2. The accused pleaded guilty to 1 charge of cheating under section 420 of the Penal Code (DAC 46411/2004) and 2 charges of fraudulently using as genuine documents which he knew to be forged under section 471 read with section 465 of the Penal Code (DAC 46412/2004 & DAC 46417/2004). 12 other charges under section 471 read with section 465 and 1 charge under section 471 read with section 467 of the Penal Code were taken into consideration for the purpose of sentencing.

***Facts***

3. The full facts are to be found in the statement marked “D”. The background to this case is that the accused, a citizen of the United States of America who was a permanent resident in Singapore, had leased an apartment at Orchard Boulevard known as “Westwood Apartment” from one Edna Ko in May 2001. In June 2001, the accused approached one Eng Fook Hoong (“Eng”), who was an insurance intermediary, for assistance in obtaining a loan of US\$500,000 which he said was for the purpose of financing his business venture in China. Eng in turn approached one Tay Ai Khim (“Tay”) and her boss Ronald Anthony Ooi Thean Yat, a Director of Kim Eng Finance (Singapore) Pte Ltd. After Tay had assessed the credit-worthiness of the accused and discovered that he had no assets in Singapore, the accused was asked to provide alternative collateral for the loan. Without informing Edna Ko, the accused provided Tay with Edna Ko’s name as a potential guarantor. Tay found Edna Ko to be a suitable guarantor as she was the registered owner of the Westwood Apartment, and informed the accused that both he and Edna Ko would have to execute the loan agreement and a deed of guarantee in her office. The accused told Tay that he would go to her office the following day to sign the loan agreement and Edna Ko would be signing the deed of guarantee before her solicitors.

4. On 3 July 2001, the accused requested Edna Ko to lend him her NRIC, saying that he required it for some verification to be conducted by his American lawyer. After some persuasion, Edna Ko agreed and told the accused that she would arrange for her secretary Windy Tan to bring it to Republic Plaza later that morning. After signing the loan agreement at Tay’s office the same day, the accused again told Tay that Edna Ko would be signing the deed of guarantee before her solicitors later that day. He then took the deed of guarantee from Tay and left her office.

5. Later the same morning, the accused arrived at the office of M/s Rodyk & Davidson (“Rodyk”) at Republic Plaza with a female accomplice. After introducing her as “Edna Ko” to the staff of Rodyk, the accused left and went to the lobby of Republic Plaza while the female accomplice was taken to one of the rooms at Rodyk’s office. Windy Tan arrived around that time and handed Edna Ko’s NRIC to one of Rodyk’s staff.

6. Unknown to Windy Tan, the NRIC was handed over to the female accomplice who was impersonating Edna Ko. The female accomplice then produced the NRIC to one Norman Ho, a lawyer at Rodyk, who witnessed the signing of the deed of guarantee as a Notary Public as he was under the impression that the female accomplice was Edna Ko. After the deed had been signed, the accused introduced the female accomplice to one Gerard Singham, a partner of the firm, and requested him to have the firm receive documents from Kim Eng Finance on behalf of Edna Ko.

7. Later the same day, the accused returned to Tay’s office and handed her the deed of guarantee. Tay, believing that the deed had been signed by Edna Ko, released the loan amount of S\$860,000 to the accused by way of a cheque.

8. When the accused handed Tay the forged deed of guarantee, he also handed her a forged letter of authorisation purportedly signed by Edna Ko authorising Kim Eng Finance to forward all mail and documents to Mr Gerard Singham of Rodyk.

9. The accused was subsequently unable to repay the loan. Letters of demand were sent to him by Kim Eng Finance’s lawyers, M/s Lee & Lee. In order to delay repayment of the loan, the accused claimed through one Justin Wee, a lawyer at Rodyk, that Edna Ko would mortgage her Westwood Apartment in favour of Kim Eng Finance. Arrangements were then made for the accused and “Edna Ko” to meet Justin Wee to sign the mortgage document. On 29

November 2001, in accordance with those arrangements, the accused and his female accomplice met Justin Wee, who handed them the mortgage document to sign. The female accomplice forged Edna Ko's signature on this document, which was then handed back to Justin Wee with instructions to forward it to M/s Lee & Lee. Subsequently, as the female accomplice was unable to produce the title deeds to the Westwood Apartment, Kim Eng Finance instituted a civil suit against the accused and Edna Ko. Appearance was entered for the accused and Edna Ko by Rodyk, and judgement was entered by consent. In the course of enforcing the judgement, M/s Lee & Lee sent a letter to the real Edna Ko's residence informing her of their intention to enforce the mortgage. Alarmed, Edna Ko called a senior partner of M/s Lee & Lee to find out what was happening, and subsequently lodged a police report on 15 August 2002.

10. The accused had by then left Singapore for the USA around 1 May 2002. On 13 February 2007, he was extradited from Hong Kong to face the present charges.

11. The accused had made restitution of only \$55,000.

***Mitigation Plea***

12. In his plea in mitigation, counsel for the accused informed me that the accused really needed the \$860,000 as a bridging loan to finance a business venture in China. According to counsel, the accused had no intention to permanently deprive Kim Eng Finance of the money and had intended to repay the bridging loan subsequently as he had some money in a trust account with Rothschild Bank AG which was frozen as a result of civil litigation. Counsel said that the accused had repaid Kim Eng Finance 2 partial repayments of \$35,000 and \$20,000 and that, added to the sum of \$90,500 that he had paid Eng for assisting in his application, the accused had benefited only to the tune of \$714,000. No explanation was advanced however as to what happened to the

money in the trust account with Rothschild Bank AG or why the accused did not subsequently proceed to make full restitution as he had allegedly intended.

13. The personal factors of the accused highlighted by counsel do not count for much mitigation value. In fact, as the holder of a post-graduate degree, the accused should have known better than to resort to such a deceitful scheme to obtain a loan.

***Antecedents***

14. The accused had no previous convictions.

***Assessment of Sentence***

15. It is obvious that much planning and preparation had gone into the commission of these offences. The accused had recruited a female accomplice to assist him, and must have carefully rehearsed with her what she was to say and do, including teaching her how to forge Edna Ko's signature. He had deceived Edna Ko into releasing her NRIC to him, and had hatched a cunning plan to prevent Edna Ko from getting wind of what he was up to, by diverting correspondence addressed to her to the office of Rodyk. He had also managed to deceive 2 lawyers, one of them a Notary Public, in the course of perpetrating his carefully orchestrated scheme.

16. The precedents on sentencing for such cases extend over a fairly wide range. In *Lee Foo Choong Kelvin v PP* [1999] 4 SLR 318, the sentence passed on an offender who was convicted of a charge of cheating involving US\$300,000 was enhanced to 36 months imprisonment. In delivering his Judgement, the then Chief Justice had this to say:

*“The sentence imposed by the district judge was, in my view, manifestly inadequate in view of the amount of money involved*

*(approximately S\$500,000), and the attitude of the appellant after the matter had been reported to the Commercial Affairs Department. In respect of the latter, I should point out that at no time did the appellant accept responsibility for his actions, and he maintained the correctness of his position in a defiant manner right to the end, despite the overwhelming evidence to the contrary.”*

17. In *Er Joo Nguang v PP* [2000] 2 SLR 645, the 2<sup>nd</sup> appellant had been convicted together with another on a charge of abetment by conspiracy to commit an aggravated form of Criminal Breach of Trust punishable under section 109 read with section 409 of the Penal Code. The value of the property involved was US\$301,763. On appeal, the charge against him was amended by the High Court to one of cheating under section 420 and his sentence was reduced to 4 years’ imprisonment. The Court explained the reason for the reduction thus:

*“In relation to B2’s appeal against sentence, I noted that the maximum term of imprisonment for the amended charge was seven years. This was lower than the maximum term of imprisonment for the original charge under s 409 of the PC, which was ten years. The original term of imprisonment passed by the trial judge of five years and six months was very close to the maximum term of imprisonment provided under s 420 of the PC. In the circumstances, to reflect the fact that the charge against B2 had been amended to one with a lower maximum term of imprisonment, I found it appropriate on the particular facts of this case to reduce his term of imprisonment to four years.”*

18. Counsel for the accused had cited the case of *Hwa Lai Heng Ricky v PP* [2005] SGHC 195, in which a sentence of 20 months’ imprisonment imposed by a District Court for an offence of cheating was reduced to 18 months on appeal.

The amount involved was \$1,940,000. However, that case can be distinguished on the ground that the appellant there did not profit at all from the offence, and the scheme was nowhere as devious as the one designed by the accused in the instant case.

19. Somewhat more lenient sentences (comparatively) were handed down in *Yap Lip Yeong v PP* (MA 352/93/01) and *Cheong Sing Whee v PP* (MA 72/2005/01). *Yap Lip Yeong* withdrew his appeal against sentence, so the sentence imposed on him by the District Court was never really tested on appeal. *Cheong Sing Whee* was the managing director and a major shareholder of the same company involved in *Hwa Lai Heng Ricky v PP*. As no written judgement was released by the High Court, its reasons for reducing the sentence to 2 years are not known.

20. In assessing sentence for DAC 46411/2004, I was guided in my quest for a starting-point by the tariffs in *Lee Foo Choong Kelvin v PP* and *Er Joo Nguang v PP*. Although the personal benefit to the accused was \$714,500, the loss sustained by Kim Eng Finance came up to \$805,000, which was more than one and a half times the amounts involved in those 2 cases. The difference of \$90,500 which the accused paid to Eng as an introduction fee does little, in my view, to reduce his culpability for this offence.

21. Counsel claimed that at least 11 of the 28 months that the accused had been in remand in Hong Kong would not be attributable to his decision to apply for a writ of *habeas corpus* and take the matter on appeal to the Hong Kong Court of Final Appeal, and had asked me to take this into consideration, either by back-dating the sentence or by reducing its length. The DPP disputed counsel's claim, and said in his written submission on sentence that had the accused not resisted extradition, he would have been surrendered to Singapore by January 2005 (a period of only 3 months from the date of his arrest in Hong Kong). I decided

that the DPP's estimate was more accurate and reasonable, and accordingly took into consideration a period of 3 months in my assessment of the sentence to impose. Bearing in mind also that the accused had pleaded guilty whereas the appellants in those 2 cases had claimed trial, I found that a sentence of 42 months' imprisonment would be appropriate for this charge.

22. Regarding the 2 charges of fraudulently using as genuine documents known to be forged, the prosecution submitted that "*In the decided cases, .....[t]he sentence for using as genuine forged documents (as in the category of the present case) under section 471 read with section 465 is about 6 months imprisonment*" and the defence submitted that "*...the appropriate sentence for the 2 proceeded charges under s 465 r/w s 471 Penal Code would be one not exceeding 6 months per charge*". In my view, a sentence of 6 months' imprisonment for each of these charges would be apposite.

23. For the reasons stated above, the accused was sentenced to 42 months' imprisonment on DAC 46411 and 6 months' imprisonment on each of DAC 46412 and DAC 46417. As required by section 18 of the Criminal Procedure Code, the sentences in DAC 46411 and DAC 46417 were ordered to run consecutively. The sentence in DAC 46412 was ordered to be concurrent. The aggregate sentence that the accused would serve is therefore 48 months' imprisonment.

24. The aggregate sentence was back-dated to the date from which the accused had been remanded in Singapore pending trial. It is questionable however whether the accused truly deserved this leniency. He had disputed his extradition and the charges all the way from the time when extradition was first sought and even after he had been extradited to Singapore, right up to the day fixed for the hearing of this case. Because he had all along claimed to be tried and had not elected to plead guilty here at the first available opportunity, various

pre-trial conferences had to be held, and it was only on the day when he finally arrived in court for the trial that the Court was informed that he had decided to plead guilty. Much was made by counsel of the fact that the accused had spent a total of 28 months in remand in Hong Kong before he was brought back to Singapore to face trial. Counsel claimed that the accused's challenge to his extradition in Hong Kong was "*not without merit*" and that he had been advised by his lawyers in Hong Kong that there were good grounds to challenge the extradition proceedings. The fact remains however that both here as well as in Hong Kong, the accused was seeking, up till the very day the trial was due to begin, to utilise every possible ground at his disposal to avoid facing the consequences for his crimes. He could thus be said to be totally unrepentant and unremorseful, and should have been made to bear the brunt of the delays resulting from the course that he himself had chosen to take.

Francis Tseng  
District Judge

DPP Anandan Bala With APP Ms Santhra for the prosecution;  
Mr Lee Teck Leng ( M/s Lee Associates) for the accused.

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