

Goh Kah Heng (alias Shi Ming Yi) v Public Prosecutor and another matter  
[2010] SGHC 167

**Case Number** : MA Nos 333 and 332 of 2009 (DACs 31694 and 31688 of 2008 and Others)  
**Decision Date** : 27 May 2010  
**Tribunal/Court** : High Court  
**Coram** : Tay Yong Kwang J  
**Counsel Name(s)** : Andre Yeap SC, Hamidul Haq, Adrian Wong and Jansen Chow (Rajah & Tann LLP) for SMY; Ng Lip Chih (NLC Law Asia LLP) for RY; Jaswant Singh and David Chew, DPPs (Attorney-General's Chambers) for the Public Prosecutor.  
**Parties** : Goh Kah Heng (alias Shi Ming Yi) — Public Prosecutor

*Criminal Law*

*Charities*

27 May 2010

Judgment reserved.

**Tay Yong Kwang J:**

**Introduction**

1 The present appeals arose from the appellants' conviction and sentence by a District Judge (the "DJ") in *Public Prosecutor v Goh Kah Heng alias Shi Ming Yi and Another* [2009] SGDC 499 (the "GD") and in *Public Prosecutor v Goh Kah Heng alias Shi Ming Yi and Another* [2009] SGDC 500 (the "GD on Sentence"). The appellants ("SMY" and "RY") were convicted after a 23-day trial in the District Court.

**The charges**

2 Originally, SMY faced ten charges but the prosecution proceeded with only four relating to the grant of a \$50,000 loan to RY. SMY claimed trial to and was convicted on the following four charges:

(a) DAC 31694/2008 ( "SMY's First Charge")

... that you, on 17 May 2004, in Singapore, being an officer of Ren Ci Hospital and Medicare Centre ("Ren Ci"), namely its Chief Executive Officer, did engage in a conspiracy with one Raymond Yeung Chi Hang ("Raymond") to falsify a paper belonging to Ren Ci wilfully and with intent to defraud, and in pursuance of that conspiracy and in order to the doing of that thing, Goh Bee Choo, a clerk of Ren Ci, prepared a payment voucher no. PV200405-082 which falsely stated that a loan of \$50,000 was made by Ren Ci to Mandala Buddhist Cultural Centre, which act was committed in consequence of your abetment, and you have thereby committed an offence punishable under s.477A read with Section 109 of the Penal Code, Chapter 224.

(b) DAC 31695/2008 ("SMY's Second Charge")

... that you, on 17 May 2004, in Singapore, being an officer of Ren Ci Hospital and Medicare Centre ("Ren Ci"), being entrusted with dominion over funds of Ren Ci, did dishonestly

misappropriate \$50,000 of Ren Ci's funds, to wit, by approving a loan of \$50,000 to one Raymond Yeung Chi Hang ("Raymond"), which loan Raymond was not entitled to, and you have thereby committed an offence punishable under Section 406 of the Penal Code, Chapter 224.

(c) DAC 31696/2008 ("SMY's Third Charge")

... that you, on 18 December 2007, in Singapore, in purported compliance with a requirement imposed by the Charities Act, Chapter 37 (the "Act"), did knowingly provide information which was false in a material particular to the Commissioner of Charities (the "Commissioner"), to wit, you furnished an oral statement on affirmation to Ms Penelope Lepeudry and Mr Ng Wan-Sing Winston, officers of Ernst and Young Associates Pte Ltd who had been duly appointed by the Commissioner to conduct the Inquiry into Ren Ci Hospital and Medicare Centre ("Ren Ci") under Section 8 of the Charities Act ("the Act") that the loan of \$50,000 by Ren Ci to Mandala Buddhist Cultural Centre ("Mandala") on 17 May 2004 was for Mandala to purchase wood, which information you knew was false, and you have thereby committed an offence under Section 10(1)(a) and punishable under Section 10(3) of the Act.

(d) DAC 31697/2008 ("SMY's Fourth Charge")

... that you, sometime around January 2008, in Singapore, did engage with one Raymond Yeung Chi Hang ("Raymond") in a conspiracy to knowingly provide the Commissioner of Charities (the "Commissioner") with information which was false in a material particular, and in pursuance of that conspiracy and in order to the doing of that thing, a letter purportedly from Bei Jing Jing Hai Shan Artifact Co. Ltd (China) stating that it had delivered two statues worth \$16,000 to Mandala Buddhist Cultural Centre ("Mandala") and that Mandala had balance of 25m<sup>3</sup> of wood was delivered to the Commissioner, which information you knew was false, which you intended the Commissioner to use for the purpose of discharging his functions under Section 8 of the Charities Act, Chapter 37 (the "Act"), and you have thereby committed an offence under Section 10(1)(b) of the Act read with Section 109 of the Penal Code, Chapter 224 and punishable under s.10(3) of the Act.

3 RY was charged with and claimed trial to two charges (DAC 31688 and DAC 31689 of 2008) which were related to two of the charges that SMY faced, namely, SMY's First Charge and Fourth Charge respectively, as follows:

(a) DAC 31688 of 2008 ("RY's First Charge")

... that you, on 17 May 2004, in Singapore, did engage in a conspiracy with one Goh Kah Heng @ Shi Ming Yi, namely its Chief Executive Officer, to falsify a paper belonging to Ren Ci Hospital and Medicare Centre ("Ren Ci") wilfully and with intent to defraud, and in pursuance of that conspiracy and in order to the doing of that thing, Goh Bee Choo, a clerk of Ren Ci, prepared a payment voucher no. PV200405-082 which falsely stated that a loan of \$50,000 was made by Ren Ci to Mandala, which act was committed in consequence of your abetment, and you have thereby committed an offence punishable under Section 477A read with Section 109 of the Penal Code, Chapter 224, 1985 Revised Edition.

(b) DAC 31689 of 2008 ("RY's Second Charge")

... that you, sometime around January 2008, in Singapore, did engage with one Goh Kah Heng @ Shi Ming Yi in a conspiracy to knowingly provide the Commissioner of Charities (the "Commissioner") with information which was false in a material particular, and in pursuance of

that conspiracy and in order to the doing of that thing, a letter purportedly from Bei Jing Jing Hai Shan Artifact Co. Ltd (China) stating that it had delivered two statues worth \$16,000 to Mandala Buddhist Cultural Centre ("Mandala") and that Mandala had balance of 25m<sup>3</sup> of wood was delivered to the Commissioner, which information you knew was false, which you intended the Commissioner to use for the purpose of discharging his functions under Section 8 of the Charities Act, Chapter 37 (the "Act"), and you have thereby committed an offence under Section 10(1)(b) of the Act read with Section 109 of the Penal Code, Chapter 224, 1985 Revised Edition and punishable under Section 10(3) of the Act.

## **Background**

4 SMY was the Chairman and Chief Executive Officer of Ren Ci Hospital and Medicare Centre ("Ren Ci") while RY was his personal executive.

5 According to the prosecution, RY was someone "very close and dear" to SMY and the "close and personal relationship" between them was pivotal to a proper appreciation of the facts of this case. The prosecution alleged that RY was able to obtain the said \$50,000 loan without documentation and repayment terms precisely because of this relationship. It was also because of this relationship that the loan was not repaid until E & Y emerged on the Ren Ci scene, that SMY tried to cover up the loan and lied to the Inquiry (see [\[65\]](#) below) and to the Commercial Affairs Department ("CAD"). Similarly, it was this relationship that explained why RY tried to shield SMY from responsibility during the trial.

6 SMY met RY in Hong Kong sometime in 2000. SMY went out of his way to secure RY's employment at Ren Ci in 2001. When RY's application for an employment pass was rejected in April 2001, SMY nevertheless offered him a job at Ren Ci in May that year. The job offer (to be SMY's assistant) was accepted by RY, with RY's salary being paid by SMY via an increase in SMY's salary. SMY also went to meet officials at the Ministry of Manpower ("MOM") to appeal against the rejection of RY's application for an employment pass. He further made personal appeals to two Members of Parliament on RY's behalf. RY's employment pass was finally approved only in November 2004.

7 SMY indulged RY with supplementary credit cards which RY used liberally. RY, an Australian citizen and permanent resident of Singapore and Macao, stayed with SMY in various condominiums when RY was in Singapore. They went on holidays together and even purchased two properties in Melbourne, Australia, jointly. One property was bought in 2002 while the other was bought in 2004. Each property apparently cost more than A\$1 million. SMY also bought a BMW car for RY's personal use in Melbourne. Counsel for RY explained that RY's name was included in the Australian properties because one of the owners had to be an Australian citizen.

8 On 17 May 2004, RY gave instructions to Ren Ci's finance manager to prepare a cash cheque (the "Cash Cheque") for \$50,000 and a payment voucher (the "Payment Voucher") reflecting a loan of the same amount from Ren Ci to Mandala Buddhist & Cultural Centre ("Mandala"). Mandala was a partnership business between SMY and one Wee Beng Seng, sanctioned by Ren Ci, which was supposed to help generate income for Ren Ci. SMY signed the Cash Cheque and Payment Voucher. The Cash Cheque was later encashed by a staff of Ren Ci on RY's behalf. RY took the cash and brought it to Hong Kong subsequently. This amount was reflected in Ren Ci's accounts as a loan to Mandala but there was no corresponding entry in Mandala's books showing the receipt or disbursement of this \$50,000. The money was never given to Mandala. This anomaly was uncovered during the audit of Ren Ci's books by Ernst & Young ("E & Y") following a corporate governance review initiated by the Ministry of Health ("MOH") in the middle of 2006, after the events surrounding the National Kidney Foundation ("NKF") had taken place. On 12 June 2007, RY tendered his resignation

from Ren Ci.

9 On 7 November 2007, a formal inquiry (the "Inquiry") under s 8 of the Charities Act (Cap 37, 2007 Rev Ed) was initiated by MOH to look into RC's affairs. During the course of the Inquiry, SMY gave evidence to the members of the Inquiry on 18 December 2007 that the \$50,000 was a loan for Mandala to purchase wood, something which was untrue.

10 On 2 January 2008, the Commissioner of Charities asked SMY to provide documentary evidence of the purchase of wood. Pursuant to this order, a letter (the "BJJHS Letter") purportedly from Bei Jing Jing Hai Shan Artifact Co Ltd (China) ("BJJHS") was given to the Commissioner. The BJJHS Letter stated that it had delivered two statues worth \$16,000 to Mandala and that there were 25m<sup>3</sup> of surplus wood. This was not true as the statues were in fact purchased and paid for by a different entity. In February 2008, the CAD conducted a raid on Ren Ci. In March 2008, the CAD called up SMY and RY for interviews.

## **The proceedings in the District Court**

### ***SMY's First Charge and RY's First Charge***

11 SMY's First Charge and RY's First Charge centred on the Payment Voucher dated 17 May 2004, [\[note: 1\]](#) evidencing a loan of \$50,000 from Ren Ci to Mandala.

12 The prosecution argued that RY took the loan directly from Ren Ci as Mandala did not have the funds to make the loan. As RY was not a staff of Ren Ci in May 2004, he was not entitled to such a loan but, in the light of the relationship between the two men, SMY approved the loan promptly nonetheless without even discussing the terms of repayment. The Payment Voucher was false in stating that there was a loan from Ren Ci to Mandala. There was no documentation of the loan in Mandala as no loan was made to it, contrary to what was stated in the Payment Voucher.

13 The defence argued, however, that there was a "back-to-back" staff loan from Ren Ci to Mandala and from Mandala to RY. If this were the case, the Payment Voucher would not be false. SMY assumed that RY would arrange the necessary documentation. RY's defence was that he totally forgot to document the loan in Mandala. The defence's evidence relating to the purpose of the loan was somewhat hazy. It was either for RY to make an urgent payment for his house in Hong Kong pending the approval of his housing loan or was for RY to help a friend in Hong Kong make an urgent payment to some renovation contractors.

14 The elements of SMY's First Charge were set out by the DJ in the GD at [189- 191]. For the offence under section 477A of the Penal Code (Cap 224, 1985 Rev Ed), the prosecution had to prove that:

(a) SMY was an officer of Ren Ci at the material time;

(b) he acted wilfully with intent to defraud; and

(c) he did so by falsifying the Payment Voucher.

Given that the charge was one of abetment by conspiracy, it was not necessary to show that SMY was the one who gave explicit instructions to falsify the payment voucher; it was sufficient to show that SMY and RY had agreed to the falsification of the Payment Voucher.

15 The DJ found that there was no back to back loan and that Ren Ci did not in fact lend \$50,000 to Mandala on 17 May 2004 (GD at [148-161]). In particular, when the Cash Cheque for the amount was encashed, the money was given to RY who kept it at home for five days, from 17 May 2004 to 22 May 2004, before flying to Hong Kong with it. Thus the money did not go to Mandala at all. There was ample time for RY to document the loan before flying off but he failed to do so. Furthermore, RY was questioned extensively during the recording of his statements on the nature of the loan and had many opportunities to mention that it was a back-to-back loan. Instead, he "confirmed at P16-202 and P17-271 that it was his plan to borrow money from Ren Ci and have it recorded under Mandala's name" (GD at [150.6]). Therefore, the Payment Voucher which described the \$50,000 as a "loan to Mandala" was false.

16 The DJ further found that SMY and RY both had the requisite intent to defraud. SMY and RY were aware that the \$50,000 was not a loan to Mandala and the description on the Payment Voucher which SMY had signed was false. As mentioned above, RY admitted that he planned to borrow money from Ren Ci and have it recorded under Mandala's name. SMY never mentioned a back-to-back loan in his 26 and 27 March 2008 statements to the CAD but went back to the CAD to mention the back-to-back loan for the first time on 31 March 2008. However, he had trouble answering when questioned why there was a back-to-back loan since RY was not a staff of either Ren Ci or Mandala (GD at [92]). The DJ further found the explanation as to why RY had allegedly asked for a loan from Mandala instead of Ren Ci to be lacking in credibility. If RY and SMY felt that RY was entitled to a Mandala staff loan as they claimed that he was managing Mandala, they should also have felt that RY was entitled to a Ren Ci staff loan. If so, RY should have asked for a Ren Ci staff loan rather than a Mandala one, since Ren Ci had the funds and had in place an existing practice of granting staff loans and a finance and human resources department to facilitate the granting of the loan (GD at [150.8]).

17 The DJ therefore held that the elements of SMY's First Charge and RY's First Charge were satisfied, since SMY had agreed with RY concerning the preparation of the false document. Further to this agreement, RY asked for the Payment Voucher to be prepared and SMY signed it, with both knowing that there was in truth no loan to Mandala.

### ***SMY's Second Charge***

18 The elements of the Second Charge were laid out by the DJ in the GD at [180] as follows:

180.1SMY was entrusted with dominion over Ren Ci's funds, namely the funds in the account from which the \$50,000 was drawn using the cash cheque.

180.2SMY had dishonestly misappropriated the \$50,000 when he approved the loan of \$50,000 to RY.

19 The DJ observed that it was not disputed that SMY was entrusted with Ren Ci's funds. The DJ further added that, in view of his finding that RY was not entitled to receive a \$50,000 loan from Ren Ci or Mandala, the element of misappropriation was satisfied (GD at [181-183]).

20 The DJ had earlier found, in the GD at [110]-[140], that RY was not entitled to receive the \$50,000 loan from Ren Ci or from Mandala. In particular, RY did not have an employment pass that would have allowed him to work for Ren Ci on 17 May 2004. With regards to Mandala, besides the fact

that RY's lack of an employment pass would have prevented him from being employed by Mandala, Mandala's accounts revealed that there was only one salaried employee at that time, Ong Keok. RY was not even on Mandala's payroll. It was also clear that the mandate given to SMY to run Mandala was that it was an investment to generate profits for Ren Ci. This was based on, among other things, minutes of a 7 November 1996 Management Committee meeting which stated that Ren Ci relied on SMY to run Mandala for Ren Ci's benefit and all profits generated by Mandala would be returned to Ren Ci. [\[note: 2\]](#)

21 The DJ also found that the following evidence supported the prosecution's case. The manner in which the \$50,000 loan was given, in marked departure from the procedure adopted for the previous staff loans given out by Ren Ci, strongly suggested that SMY and RY knew that the granting of the loan was wrong and thought it necessary to hide it from the Ren Ci finance department (GD at [123]-[130]). Contrary to RY's argument that the lack of documentation was due to the urgent need for the loan, the DJ noted that RY's behaviour suggested otherwise, in particular the fact that he waited until 22 May 2004 before flying to Hong Kong and depositing the cash in his bank account two days later (GD at [131]-[135]). The lack of a repayment plan also suggested that the loan was not proper (GD at [136]-[140]).

22 On the element of dishonesty, the DJ held that this requirement was satisfied as SMY knew that by his actions of signing the Cash Cheque and Payment Voucher, RY was obtaining a wrongful gain in the form of \$50,000 that he was not entitled to and at the same time, Ren Ci would be, at the very least, temporarily deprived of the money. The DJ therefore found that the elements of the Second Charge were satisfied.

### ***SMY's Third Charge and Fourth Charge and RY's Second Charge***

23 The DJ set out the elements of SMY's Third and Fourth Charges and RY's Second Charge, in the GD at [192]. I quote:

192.1SMY (and RY where appropriate) knowingly provided information to the Commissioner of Charities which was false in a material particular.

192.2The information was either intended to be used by the Commissioner to discharge his functions under the [Charities] Act (DAC 31696/2008), or that it was provided in purported compliance with the Commissioner's order of 2 January 2008 (DAC 31697/2008).

24 The DJ found that at the time of these offences, RY had already informed SMY that he was going to use the story that \$50,000 had been used to purchase wood and that SMY knew the story and the BJHS Letter's contents were untrue (GD at [86], [164-168]). The DJ also found that SMY knowingly provided false information to the Inquiry on 18 December 2007, that RY arranged for the preparation of a false document (the BJHS Letter) and SMY produced this pursuant to the order of the Commissioner, knowing that it was a false document (GD at [193]). Accordingly, the DJ was satisfied that the elements of SMY's Third Charge and Fourth Charge and RY's Second Charge were satisfied.

25 The DJ also thought that SMY's claim that he had forgotten about the loan was not plausible (GD at [177]-[179]). In particular, SMY had given RY a number of supplementary credit cards and kept track of the credit card bills and RY's repayment of the same. It was therefore odd that SMY was able to do this but could forget about the \$50,000 loan.

### **The Sentences**

26 After finding that the elements of the charges were satisfied and convicting SMY and RY on their respective offences, the DJ proceeded to consider the sentences to impose.

27 In relation to SMY, the DJ noted that the offences involved an abuse of his authority and a betrayal of the trust reposed in him as CEO and Chairman of Ren Ci (GD on Sentence at [23]-[28]). Donors expected their money to be put to good use. When the Inquiry began, SMY made things worse by giving false evidence to the Commissioner of Charities. SMY even gave false evidence under affirmation. The aggravating factors above were balanced against SMY's record of public service and contributions to society and the effect the conviction would have on his position at Ren Ci and other organizations. The DJ also took into account the fact that SMY was not the beneficiary of the \$50,000.

28 In relation to RY, the DJ considered it significant that RY received a benefit as a result of the offence (GD on Sentence at [29]-[30]). Furthermore, in relation to the provision of the false letter, a custodial sentence was merited since the object of the offence was to cover up wrongdoing. These factors were balanced with the fact that he was a first offender.

29 In relation to both SMY and RY, the DJ took into account the fact that such offences affected not just a single charity but all charities, as far as the public's trust and confidence were concerned. The DJ reasoned that the sentences imposed therefore had to sufficiently deter similar offences.

30 The DJ sentenced SMY as follows (GD on Sentence at [32]):

(a) SMY's First Charge- 6 months' imprisonment

(b) SMY's Second Charge- 4 months' imprisonment

(c) SMY's Third Charge- 4 months' imprisonment; and

(d) SMY's Fourth Charge- 2 months' imprisonment

The DJ ordered the sentences for SMY's First Charge and Third Charge to run consecutively for a total sentence of 10 months' imprisonment. SMY is on bail pending appeal.

31 The DJ sentenced RY as follows (GD on Sentence at [32]):

RY's First Charge- 7 months' imprisonment

RY's Second Charge- 2 months' imprisonment

The DJ ordered both sentences to run consecutively, resulting in a total sentence of nine months' imprisonment. RY is also on bail pending appeal.

## **SMY's appeal against conviction**

### ***SMY's First Charge***

32 Counsel for SMY argued that the prosecution had failed to establish the following elements beyond reasonable doubt:

- (a) that RY committed an offence under section 477A of the Penal Code in that there was no proof that RY had the intention to defraud Ren Ci when he requested and made arrangements for the loan;
- (b) that the Payment Voucher was false, i.e. that the loan was not one from Ren Ci to Mandala; and
- (c) that on all the facts in the case, an inexorable and irresistible inference should be drawn that SMY had conspired with RY to falsify the Payment Voucher to state that the loan was one from Ren Ci to Mandala, with the intention to defraud Ren Ci.

I shall first address the second argument, followed by the first and third arguments together since they are related.

#### *Was the Payment Voucher false?*

33 In support of this point, counsel for SMY argued that (i) RY had requested a loan from Mandala, (ii) the Mandala loan was recorded in Ren Ci's books as a loan from Ren Ci to Mandala, and (iii) the Mandala loan was recorded as part of the total outstanding sum owed by Mandala to Ren Ci in audit confirmations by Mandala to Ren Ci dated 21 June 2005 [\[note: 3\]](#) (signed by SMY), 24 April 2006 [\[note: 4\]](#) (signed by RY) and 18 May 2007 [\[note: 5\]](#) (signed by RY).

34 Counsel submitted that when RY first approached SMY for a loan on 17 May 2004, he asked to borrow \$50,000 from Mandala. SMY was not aware at that point if Mandala had adequate cash to lend the said amount to RY as SMY had never managed Mandala from the start. It was only when RY returned with the Cash Cheque and Payment Voucher for SMY's approval that SMY realised that Mandala did not have adequate funds to lend RY the \$50,000. Therefore, the money had to come from Ren Ci as a loan to Mandala.

35 However, as the DJ noted, the money did not go to Mandala at all. RY kept the cash in his home for five days before flying to Hong Kong and depositing it into his account. RY admitted that his plan was to borrow money from Ren Ci and record it under Mandala's name. Quite interestingly, in 2007, RY repaid the loan to Ren Ci rather than to Mandala. Moreover, no mention of any back-to-back loan was made in RY's note to Ren Ci's finance department. [\[note: 6\]](#)

36 The evidence indicated that SMY knew that there was no back-to-back loan. SMY did not mention the back-to-back loan in his initial statements to the CAD. SMY had admitted that a back-to-back loan was not a proper way to give a loan to RY. [\[note: 7\]](#) Further, as the DJ found, the justification by SMY and RY for the loan coming from Mandala, instead of directly from Ren Ci, lacked



credibility (GD at [150]-[151]).

37 The loan was never recorded in Mandala's books. Counsel for SMY attempted to explain this glaring inconsistency by pointing to the audit confirmations for Ren Ci. The audit confirmations were stated by Mr Winston Ngan, PW 2, at the trial below [\[note: 8\]](#), to be consistent with the description of the loan as a loan for \$50,000 from Ren Ci to Mandala. However, the audit confirmations were consistent with Ren Ci's accounts but not with those of Mandala. They also stated a global figure without individual breakdowns. Mandala merely confirmed that the global amount owed by Mandala to Ren Ci was correct, even though the alleged loan to RY did not appear in its records. In these circumstances, the audit confirmations could not be said to be evidence of the existence of a back-to-back loan from Ren Ci to Mandala and then to RY.

38 It is trite law that an appellate court will be slow to interfere with the trial judge's finding of fact. As Yong Pung How CJ held in *Chua Yong Kiang Melvin v PP* [1999] 2 SLR (R) 1108 at [31]:

It is settled law that an appellate court will defer to the trial judge's finding of fact: see *PP v Hla Win* [1995] 2 SLR(R) 104 at [38]. There is a sound rationale for this. The trial judge enjoys the advantage of observing the demeanours of the witnesses. In deciding who to believe, he takes into consideration all relevant factors involved, with the advantage of his observations. An appellate court therefore does not lightly disturb such findings, unless they can be shown to be plainly wrong, against the weight of the evidence or that the trial judge has not taken proper advantage of his having seen and heard the witnesses: *Sundara Moorthy Lankatharan v PP* [1997] 2 SLR(R) 253 and *Krishna Jayaram v PP* [1989] 2 SLR(R) 21 .

On the evidence, I see no reason to disturb the DJ's findings that there was no back-to-back loan and that the Payment Voucher was false.

*Did SMY conspire with RY to falsify the Payment Voucher wilfully with the intent to defraud?*

39 The offence of abetment by conspiracy is found in section 107(b) of the Penal Code:

**107.** A person abets the doing of a thing who —

...

(b) engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing...

The requirements for the offence of abetment by conspiracy were spelt out in *Lee Yuen Hong v Public Prosecutor* [2000] 1 SLR(R) 604 at [38]:

On a charge of abetment by conspiracy, the Prosecution has to establish the following elements:

- (1) the person abetting must engage, with one or more other persons, in a conspiracy;
- (2) the conspiracy must be for the doing of the thing abetted; and
- (3) an act or illegal omission must take place in pursuance of the conspiracy in order to the doing of that thing.

40 Proof of an agreement between the parties can be inferred from the words and actions of the parties, as elaborated upon in *Public Prosecutor v Yeo Choon Poh* [1993] 3 SLR(R) 302 at [20]. I quote:

One method of proving a conspiracy would be to show that the words and actions of the parties indicate their concert in the pursuit of a common object or design, giving rise to the inference that their actions must have been co-ordinated by arrangement beforehand. These actions and words do not of themselves constitute the conspiracy but rather constitute evidence of the conspiracy.

The inference of a conspiracy was clarified by Yong CJ in *Er Joo Nguang and another v Public Prosecutor* [2000] 1 SLR(R) 756 at [35]:

So far as proof goes, conspiracy is generally a matter of inference, deduced from certain acts of the accused parties, done in pursuance of an apparent criminal purpose in common between them. Both the surrounding circumstances and the conduct of the parties before and after the alleged commission of the crime will be useful in drawing an inference of conspiracy... An inference of conspiracy would be justified only if it is inexorable and irresistible, and accounts for all the facts of the case.

41 After examining the evidence in the case at hand, I agree with the DJ's finding that there was an agreement between SMY and RY to falsify the Payment Voucher. Adopting the test in *Public Prosecutor v Yeo Choon Poh* (above at [40]) to the case at hand, the words and actions of SMY and RY clearly illustrated their "concert in pursuit of a common object or design", the common object being the falsification of the Payment Voucher. This was evident from RY's instruction to the finance department to record the 50,000 as a loan to Mandala in the Payment Voucher and SMY's subsequent authorization of the Payment Voucher. RY's statement to the CAD confirmed that he gave the instruction to the finance department and that SMY agreed to record the \$50,000 as a loan to Mandala. [\[note: 9\]](#) SMY admitted to the CAD that he knew that the loan was a personal loan to RY when he approved and signed the Cash Cheque. [\[note: 10\]](#)

42 There could be no doubt that SMY and RY had engaged in the conspiracy wilfully. Furthermore, the DJ found that SMY and RY had the intent to defraud. I agree with the approach adopted by the DJ in following *Public Prosecutor v Chow Wai Lam* [2006] SGDC 1 at [47]-[52] with respect to the definition of "intent to defraud". The proper approach should be to examine all the facts and circumstances surrounding the relevant transaction to determine whether or not there was an intent to defraud. Both SMY and RY knew that there was no back-to-back loan and that the loan was a personal one to RY, not a loan from Ren Ci to Mandala. Yet they went on to mask the \$50,000 as a loan to Mandala. The intent to defraud was therefore present.

43 Given that (i) SMY and RY engaged in a conspiracy to falsify the Payment Voucher, (ii) SMY and RY did so wilfully and with intent to defraud (as per the requirements of section 477A Penal Code) and (iii) the Payment Voucher was falsified, all three requirements for the offence of abetment by conspiracy, as laid out in *Lee Yuen Hong v Public Prosecutor* (above at [\[39\]](#)), were satisfied with respect to the offence under section 477A. I therefore affirm the conviction of SMY and RY in relation to SMY's First Charge and RY's First Charge respectively.

#### *SMY's Second Charge*

44 The Second Charge involved the offence of criminal breach of trust. This is defined in

section 405 of the Penal Code:

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

In *Tan Tze Chye v PP* [1997] 1 SLR(R) 876, Yong CJ stated at [36] that in order to constitute the offence of criminal breach of trust, the accused had to be "(a) entrusted with the property, and he had to have (b) dishonestly misappropriated the property". Yong CJ added at [37] that to misappropriate means "to set apart or assign to the wrong person or wrong use".

45 Counsel for SMY argued that the granting of a loan was always a discretionary matter, subject to SMY's approval, since no one, whether a staff or a volunteer, was entitled to any loan. The Management Committee had unconditionally left authority with SMY to decide whether to grant a loan or not. Thus, SMY's authority to grant any loan was not affected by RY's employment status. The size of a loan would not have any bearing on SMY's authority to grant a loan; rather it would be one of the factors that was relevant when SMY decided whether the loan should be approved or not.

46 Counsel for SMY further argued that the examples of previous loans granted by Ren Ci did not mean that there was a standing policy on loans because no formal policy was in place. Rather, the evidence at trial was that each and every loan by Ren Ci would be considered on a case-by-case basis.

47 Counsel for SMY argued that the Management Committee had left the day-to-day affairs of Ren Ci and Mandala entirely to SMY. SMY's unchallenged testimony at trial was that the Management Committee never had any formal discussion setting out any guidelines for loans to staff nor had the Management Committee talked about any prohibitions on the granting of a loan to a person who, though not a staff, had contributed to Ren Ci. Thus, the Appellant was of the honest belief that he was authorised to grant the loan.

48 SMY's responsibilities in Ren Ci had increased and he required a personal assistant to help him with his duties here and to travel with him to his many offices in Hong Kong and Taiwan. SMY contended that MOM officials in 2001 had intimated that, even though RY's application for an employment pass was not approved, if RY's salary was paid through SMY's salary, people might just close one eye. This was of course denied by the MOM witness during the trial as MOM officials would not condone infringement of manpower law and would never advise people on how to break the law. In any event, counsel for SMY argued, RY was in substance and in truth an employee of Ren Ci at the time of the loan in May 2004. He was running Mandala, he was openly performing duties as a staff of Ren Ci and his name appeared in the minutes.

49 Counsel for SMY further submitted that RY did not ask for a personal loan but requested to borrow money from Mandala to pay for his house in Hong Kong and said he would repay the money once his housing loan was approved. It was ironical that all this had to happen as SMY could have easily raised the money requested from supporters. RY told him that he would record the loan in Mandala's books but unfortunately did not.

50 The lack of any dishonest intention, counsel submitted, was supported by the fact that the loan was recorded in Ren Ci's accounts and the various audit confirmations. Further, given that SMY

was a partner in Mandala and was personally liable for any loans extended by Ren Ci to Mandala, no loss was occasioned to Ren Ci at any time by the granting of the \$50,000 loan.

51 The DJ rightly observed that the testimony showed that Ren Ci had only granted loans to staff in the form of salary advances and its Human Resources staff had never come across an application by a volunteer for a loan (GD at [19]). Clearly, on the facts, RY was not a staff of Ren Ci at the material time although SMY obviously treated him as one despite the known legal impediment. The fact that RY's salary had to be paid indirectly through SMY's increased salary showed that SMY wanted to employ RY even if the law said no. Furthermore, any funds loaned from Ren Ci to Mandala had to be used to run Mandala's business only. Ms Chan Ching Oi (PW 7), the Honorary Secretary of the Management Committee of Ren Ci, confirmed that loans made to Mandala had to be used to sponsor Mandala's business and was not meant for third parties. Had Ms Chan been aware that the \$50,000 was not received by Mandala but by a third party, she would not have approved the loan. [\[note: 11\]](#) Therefore there clearly was a misappropriation, as the funds were diverted to the wrong person and for a wrong use.

52 The next element of the offence is the element of "dishonesty". "Dishonesty" is defined in section 24 of the Penal Code as follows:

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

"Wrongful gain" is defined in section 23 as:

gain by unlawful means of property to which the person gaining it is not legally entitled

while "wrongful loss" is defined in the same section as:

loss by unlawful means of property to which the person losing it is legally entitled.

53 I agree with the reasoning of the DJ (GD at [187]) that the element of dishonesty was satisfied as SMY was aware that by signing the Cash Cheque and the Payment Voucher, RY was obtaining a wrongful gain in getting a \$50,000 loan that he was not entitled to and Ren Ci was deprived of the money. The following factors strongly suggested that SMY intended to cause gain to RY by unlawful means and loss to Ren Ci by unlawful means:

- (a) the \$50,000 loan was granted in a manner that was markedly different from previous loans granted by Ren Ci;
- (b) the loan was misleadingly stated to be a "Loan to Mandala" on the Payment Voucher;
- (c) SMY attempted to cover up the fact that the \$50,000 was given to RY as a loan, through, among other things, providing documents to E & Y in an attempt to show that the \$50,000 had been used to purchase statues; [\[note: 12\]](#) and
- (d) SMY lied to the CAD initially but later admitted that he knew the \$50,000 was a personal loan to RY at the time it was made.

54 Even if an accused intends a misappropriation to be temporary only, this is sufficient to satisfy the element of dishonesty. This was elucidated by Abdooldader J in *PP v Datuk Haji Harun bin Haji Idris* [1977] 1 MLJ 180 (and endorsed by Yong Pung How CJ in *Lee Yuen Hong v PP* at [46]-[48]):

"[dishonesty in the context of criminal breach of trust] must be held to have been established even though the deprivation may have been only for a short period and there may not have been any intention on the part of the accused to have any permanent gain to himself or cause any permanent loss to the person entitled to the property".

Yong CJ went on to add, at [48]:

Temporary misappropriations which are seemingly innocuous and do not cause any loss to the employer should not be permitted by the law in any event. Even though [the accused] may have intended to return the disputed sum... *at the time the disputed sum was handed over to the appellant*, he was nevertheless dishonest at law.

[emphasis in original]

As such, it is immaterial to SMY's Second Charge that the money was taken and repaid to Ren Ci eventually (and even then, only when the issue of the missing funds was being looked into).

55 Counsel for SMY pointed out that SMY donated \$50,000 to Ren Ci on 30 August 2005 and that RY repaid the loan by paying \$10,000 to Ren Ci on 4 January 2007 and another \$40,000 on 7 March 2007. In October 2007, SMY was still unaware that the missing \$50,000 was in fact the Mandala loan to RY and therefore felt compelled to reimburse RY for the \$50,000 that he had paid to Ren Ci earlier that year as he thought that RY had to come up with his own money to make good the missing \$50,000. SMY felt bad that the money went missing during his watch. SMY therefore gave \$50,000 to RY in October 2007 because of this. RY took \$1,000 in cash and deposited the rest into his account. Counsel therefore asked rhetorically whether SMY's actions were consistent with a person who wanted to cause wrongful loss to Ren Ci.

56 I asked whether this meant that RY was dishonest towards his benefactor and boss because he knew that he was merely repaying his loan and yet accepted the compensation of \$50,000 from SMY. Counsel for RY replied that RY did not dare come clean at that point in time because he knew that he had forgotten to record the loan in Mandala's books and did not want Ren Ci to become another NKF saga.

57 In my opinion, RY's explanation for this sounded extremely hollow. There was no indication that his relationship with SMY had changed by 2007 that he would effectively lie to someone so close to him and so concerned for his wellbeing. If it was a mere administrative slip-up and there was nothing surreptitious at all about the loan, surely RY would not be cheating SMY of \$50,000 in this manner. What the two men were doing with the fund transfers was something known only to them. After all, their very close relationship extended to financial matters as well. This was amply demonstrated by the joint purchases of the Australian properties early in their relationship and by the provision of supplementary credit cards by SMY for RY. As for the donation in 2005 by SMY, while that is commendable, it does not necessarily follow that a person who donated money to a charity in August 2005 could not have also misused its funds in May 2004.

58 Further, as alluded to earlier, the repayments by RY to Ren Ci came about only after E & Y had started probing the charity's financial situation. The repayments were also more than two and a half

years after the loan was given in May 2004. Such a scenario surely makes one wonder whether and when the loan would be repaid if no investigations had taken place. Despite RY's claim that the loan came from Mandala, he nevertheless saw it proper to repay Ren Ci directly.

59 In my view, all these actions by the two men reinforced rather than negated the finding of dishonesty. I have already said that the audit confirmations could not be evidence of the alleged back-to-back loan as the consolidated amount showed no indication that there was such a loan. I therefore agree with the DJ and affirm the conviction in respect of SMY's Second Charge.

### ***SMY's Third Charge***

60 Counsel for SMY argued that while SMY knew the general purpose of the Mandala loan when he granted it on 17 May 2004, he later believed that RY had made repayment sometime in 2004 or 2005 once his housing loan was approved as he trusted RY to do so. The possibility of the loan still being outstanding escaped his mind during the interview with E & Y on 18 December 2007. Only in or around January 2008, after RY had informed him of the truth about the loan did it dawn on SMY that the "missing" \$50,000 was the Mandala loan.

61 Before addressing counsel's arguments, it is necessary to first turn to the law. The Charities Act (the "Act"), in section 3(1)(a), provides for the appointment of a Commissioner of Charities. The objectives of the Commissioner, as spelt out in section 4(1) of the Act, are:

- (a) to maintain public trust and confidence in charities;
- (b) to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities;
- (c) to promote the effective use of charitable resources; and
- (d) to enhance the accountability of charities to donors, beneficiaries and the general public.

The general functions of the Commissioner include (see section 4(2)) of the Act:

- (a) to determine whether institutions are or are not charities;
- (b) to encourage and facilitate the better administration of charities;
- (c) to identify and investigate apparent misconduct or mismanagement in the administration of charities;
- (d) to take remedial or protective action in connection with misconduct or mismanagement in the administration of charities;

...

62 The Commissioner is vested, through section 8 of the Act, with a power to institute inquiries concerning a charity. Section 8(2) provides that the Commissioner may conduct such an inquiry himself or appoint a person to do so and report to him. Section 8(3) states that the Commissioner or a person appointed by him to conduct the inquiry may by order require any person:

- (a) to furnish accounts and statements in writing with respect to any matter in question at the inquiry, being a matter on which that person has or can reasonably obtain information, or to

return answers in writing to any questions or inquiries addressed to him on any such matter, and to verify any such accounts, statements or answers by statutory declaration;

- (b) to furnish copies of documents in his custody or under his control which relate to any matter in question at the inquiry, and to verify any such copies by statutory declaration; and
- (c) to attend at a specified time and place and give evidence or produce any such documents.

Section 8(4) states that for the purposes of the inquiry, evidence may be taken on oath and the person conducting the inquiry may, for that purpose, administer oaths or alternatively require the person examined to make a declaration of the truth of the matters about which he is examined.

63 Section 9 grants the Commissioner the power to call for documents and to search records for the purpose of discharging his functions under the Act. Section 10(1), the provision cited in SMY's Third Charge and Fourth Charge, creates the offence of supplying the Commissioner with information which is false or misleading in a material particular. It reads:

Any person who knowingly or recklessly provides the Commissioner with information which is false or misleading in a material particular shall be guilty of an offence if the information is provided —

- (a) in purported compliance with a requirement imposed by or under this Act; or
- (b) otherwise than as mentioned in paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Commissioner for the purpose of discharging his functions under this Act.

Section 10(4) clarifies that references to the Commissioner in section 10 include references to any person conducting an inquiry under s 8. Finally, section 10(3) states that any person guilty of an offence under section 10 shall be liable to a fine of up to \$5,000 or to imprisonment for a term not exceeding one year or both.

64 Regulation 2(1) of the Charities (Sector Administrators) Regulations (Cap 37, Section 40C, 2007 Ed) allows the Commissioner to delegate to any Sector Administrator (as defined in section 40A of the Act) any function or power under the Act in relation to charities. Pursuant to that power, the Commissioner delegated his powers under the Charities Act to the MOH to be exercised in relation to charities within the health sector.

65 Turning to the facts of the case, the MOH instituted the Inquiry on 7 November 2007 under section 8(1) of the Act in relation to, among other matters, the issuance of the Cash Cheque of \$50,000. [\[note: 13\]](#) The MOH further appointed certain officers from MOH and E & Y to conduct the Inquiry and make a report of the findings. On 18 December 2007, SMY provided an oral statement to E & Y on affirmation stating that the \$50,000 was used by Mandala to purchase wood for sculpting Buddha statues. [\[note: 14\]](#) SMY's admission to the CAD that he knew that the loan was a personal loan to RY when he approved and signed the Cash Cheque meant that he knowingly provided E & Y with information which was false in a material particular, as SMY knew that the story about the \$50,000 being used by Mandala to purchase wood was untrue. The information was provided as part of the Inquiry and was therefore provided in purported compliance with section 8(3) of the Act.

66 Counsel for SMY submitted that 2004 and the following years were an extremely hectic time for SMY. He was personally involved in many fund-raising projects and religious activities and the Mandala loan to RY was completely forgotten by him. I note that SMY had the time to travel to Australia with

RY to purchase a penthouse in Melbourne (one of the two properties referred to earlier) in September 2004 despite his busy schedule. As the DJ also pertinently observed, it was not plausible that SMY was able to keep track of RY's repayment of the credit card bills but could forget altogether about the \$50,000 loan. SMY and RY were in close and constant contact with each other concerning work and their personal financial matters.

67 It was quite incredible that SMY never once asked RY after May 2004 whether he had obtained the Hong Kong housing loan and whether he had repaid the \$50,000 or any portion thereof to Mandala. Even if the loan did slip his mind for a while, when the heat of the Inquiry started getting more intense, it was not possible that SMY would not try to recollect what the missing \$50,000 could be, by meeting his staff members and/or checking the relevant documents. Further, it must be remembered that in February 2007, Ren Ci had given information to MOH that the said amount was expended on cupboards and fittings. Then in March 2007, Ren Ci gave information to MOH that the missing \$50,000 was expended on merchandise, another incorrect assertion. With the story about the \$50,000 constantly evolving in the face of a serious query from the authorities, SMY's seeming indifference and total reliance on what RY told him without verification was completely at odds with someone holding such a responsible position in the charity.

68 I also find it absurd that RY would be so forgetful about documenting such a unique loan of indeterminate duration that he completely forgot to record it in Mandala's books over the years. After all, there was no evidence that Mandala had so many business activities that RY's attention was totally diverted away from the loan. If SMY and RY were right in saying that the audit confirmations from Ren Ci included the said loan, then they could not have signed the audit confirmations without remembering the alleged loan to Mandala. I also find it incredible that RY would be so fearful of owning up to a simple administrative error, if error it be, of forgetting to record a loan in the books that he would hide that fact from SMY, someone he was obviously close to professionally and personally. In my view, it was true that SMY and RY were worried about the fallout from the NKF saga but it was in the context of them having misused Ren Ci's funds for a personal loan (with no repayment or other terms) for someone not entitled to it and their concern that this financial misdeed and blatant breach of employment law would be discovered. Their efforts to plaster over an alleged innocent administrative lapse raised so many questions that they appeared to me to be digging a 20-foot tunnel to bury a small ant.

69 In the circumstances, I agree with the DJ that SMY was guilty of the offence under section 10(1)(a) of the Act.

### ***SMY's Fourth Charge***

70 Counsel for SMY submitted that SMY was not aware, when the BJJHS Letter was forwarded to E & Y, that the \$50,000 was not used to purchase wood from China. RY confirmed that he did not discuss with nor inform SMY that he would be speaking with Zhang Jin Hai (PW 14) to have the BJJHS Letter issued. Zhang Jin Hai confirmed that SMY had no part to play in the issuance of the BJJHS Letter and that he dealt only with RY in relation to the issuance of the BJJHS Letter. There was no evidence of SMY's participation in any conspiracy for the preparation of the BJJHS Letter. After RY confessed to SMY sometime towards the end of January 2008, SMY agreed to continue RY's lie on the wood story as he feared that the error on RY's part in failing to record the \$50,000 loan would have a negative impact on Ren Ci.

71 After SMY provided the oral statement on affirmation to E & Y, Lynda Soong, the Head of the Inquiry, issued an order [\[note: 15\]](#) (the "Order") dated 2 January 2008 under section 8(3) of the Act requesting that SMY produce documents evidencing the valuation of the two statues allegedly bought



by Mandala with the \$50,000. Pursuant to the Order, E & Y interviewed SMY and received a written statement [\[note: 16\]](#) by SMY dated 4 January 2008 stating that the wood and Buddha statues were purchased from BJJHS in China and that the total cost of the two statues was \$16,000 with 25m<sup>3</sup> of timber left over. SMY was asked to furnish documents in support of this. Sometime in January 2008, E & Y received a letter [\[note: 17\]](#) on the letterhead of BJJHS addressed to Mandala, stating that two wooden Buddha statues, costing \$16,000 in total had been shipped to Singapore on 13 August 2007 and that there was a balance of 25m<sup>3</sup> of wood.

72 The law relating to the offence of abetment by conspiracy has been discussed above. There was ample evidence to infer a conspiracy on the part of SMY and RY to knowingly provide E & Y with information that was false in a material particular. RY confessed that it was his idea to come up with the excuse that the \$50,000 was used to buy wood and statues from BJJHS. [\[note: 18\]](#) He told the excuse to SMY who agreed to help him with the cover up. According to RY, SMY knew that the letter was a fake but was merely helping RY cover up. SMY admitted furnishing the BJJHS Letter to E & Y and that at the time the documents were submitted, SMY was aware that the statues were not purchased by Mandala. [\[note: 19\]](#) Thus, the words of SMY and RY indicated concerted action between them in pursuit of a common aim from which a conspiracy could be inferred. The actions of SMY and RY also supported the inference of a conspiracy. Following a request by E & Y to SMY for further documents in support of his written statement dated 4 January 2008, RY approached Zhang Jin Hai who drafted the BJJHS Letter according to RY's instructions and faxed it to RY. This letter was subsequently provided to E & Y by one of Ren Ci's staff. The BJJHS Letter contained information that was strikingly similar to what was required by E & Y. This could not have been possible without concerted action between RY and SMY.

73 Pursuant to that conspiracy, the BJJHS letter was handed over to E & Y. As such, all the elements of a conspiracy between SMY and RY to knowingly provide E & Y with information that was false in a material particular were satisfied. The DJ was therefore correct in finding that SMY was guilty of the offence under section 10(1)(b) of the Act as well.

74 My remarks concerning SMY's Third Charge apply equally to SMY's Fourth Charge. In my opinion, SMY could not have forgotten about the loan. It follows that all the information that he gave to the Inquiry was provided by him with full knowledge of what the truth was and that the truth was not in the said information. If he realized the falsity of the information only after it had been furnished to the Inquiry, I see no reason why he would not want to rectify the error immediately. After all, it was allegedly a simple administrative slip-up on the part of one of his former staff members. Which of the following is infinitely worse? A slip-up with no loss to the charity (as the loan had been fully repaid by RY by March 2007) or continue a blatant falsehood perpetrated by a former staff member (RY tendered his resignation in June 2007)? For a man of SMY's status and experience, I have no doubt he would have chosen the correct path if he was truly unaware of the falsehood when he tendered the information. RY was obviously hoping to exonerate SMY from the false information charges under the Act by the much too coincidental assertion that he finally revealed the truth to SMY in late January 2008, after SMY had given the false information to the Inquiry.

75 On the totality of the evidence before me, I agree with the findings of the DJ regarding SMY's conviction on all four charges and accordingly dismiss SMY's appeal against conviction. I shall now address RY's appeal against conviction.

## **RY's appeal against conviction**

### ***RY's First Charge***

76 Counsel for RY argued that the \$50,000 loan was a *bona fide* loan. RY attempted to cover up the matter only because he had forgotten to record the loan in Mandala's books and was worried and scared about this omission. RY remembered at all times that he had taken a loan from Mandala. He intended to repay the loan from the proceeds of sale of his shares but as the price of the shares was low, he wanted to wait and repay the entire loan in one payment.

77 Counsel further argued that the repayment of \$50,000 by SMY to RY in late 2007 (as evidenced by a deposit of \$49,000 [\[note: 20\]](#) in RY's bank account, with RY retaining \$1,000 for his use) was evidence of the absence of a conspiracy to falsify the Payment Voucher as it showed that SMY had forgotten that the missing \$50,000 was the loan that RY had taken in 2004. The fact that RY acknowledged and signed the audit confirmations was indicative of RY's lack of fraudulent intent with regard to the \$50,000.

78 Furthermore, counsel submitted, the close and personal relationship between RY and SMY would explain why:

- (a) SMY approved the back-to-back loan without much discussion with RY;
- (b) SMY trusted and left it to RY to make the entry in Mandala's books;
- (c) SMY trusted RY to make repayment of the loan once his housing loan was approved; and
- (d) SMY did not track the repayment of the loan as closely as he should have.

79 As discussed above, I agree with the findings of the DJ that there was no back-to-back loan. Further, the evidence clearly showed that SMY and RY conspired to falsify the Payment Voucher. I have already explained in relation to SMY's appeal why I did not accept SMY's and RY's evidence regarding this offence.

80 Accordingly, I dismiss the appeal against conviction on RY's First Charge.

### ***RY's Second Charge***

81 Counsel for RY argued that RY had stated in his evidence in chief and under re-examination [\[note: 21\]](#) that there were material errors in his statements to the CAD [\[note: 22\]](#) on 26 March 2008. RY clarified that SMY only knew about the BJJHS Letter at the end of January 2008 and that RY did not inform SMY about the preparation and obtaining of the BJJHS Letter. The formation of the story about the wood only came about sometime in July 2007 and thus it was impossible for RY to have approached SMY concerning the cover up towards the end of 2006 or in the early part of 2007. It was submitted that there was therefore no conspiracy between SMY and RY to cover up the Mandala loan.

82 The above points were dealt with by the DJ in the GD at [85]-[86]. The fact that SMY knew about the cover up before he gave the oral statement to E & Y was also consistent with the other facts in the case. Much of what I have stated in respect of SMY's Third Charge and Fourth Charge

applies equally to RY's Second Charge. I have already stated that I disbelieved that RY would travel so far down the road of falsehood over an allegedly innocent slip-up which had occasioned no loss to the charity. I therefore dismiss the appeal against conviction with respect to RY's Second Charge.

83 I now turn to SMY's and RY's appeals against their respective sentences.

### **SMY's appeal against sentence**

84 The Penal Code (Cap 224, 1985 Rev Ed) as it stood before 1 February 2008 applies to this case. Section 477A Penal Code provides for imprisonment of up to seven years or fine or both while section 406 Penal Code provides for imprisonment of up to three years or fine or both. Section 10(3) of the Act prescribes punishment of a fine not exceeding \$5,000 or imprisonment not exceeding one year or both. Section 109 Penal Code provides that whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by the Penal Code for the punishment of such abetment, be punished with the punishment for the offence.

85 The sentences imposed on SMY and RY have been set out at [\[30\]](#) and [\[31\]](#) above.

86 Counsel for SMY argued that the sentence imposed by the trial judge was manifestly excessive in view of:

- (a) SMY's good character and service to the public; and
- (b) the contribution by SMY of his time, effort and finances over the past 15 years to start and sustain Ren Ci, a hospital for the needy, chronically ill.

It was submitted that SMY had a long and distinguished record of public, social and charitable service and had personally helped thousands, if not tens or hundreds of thousands, of Singaporeans who walked through the doors of Ren Ci in the course of his charity and religious work.

87 Counsel also argued that public interest did not demand a custodial sentence. SMY had to endure great embarrassment and trauma due to the publicity generated by the trial. Counsel further argued that even if the court was of the view that a custodial sentence was necessary, in the light of the "clang of the prison gates" principle as applied in *Knight v Public Prosecutor* [1992] 1 SLR 720, a symbolic, short custodial sentence of 1 day would suffice. Counsel submitted that SMY's work had a much wider direct public outreach and contribution than the type of public service rendered by the appellant in *Knight v Public Prosecutor*, who, in any event, was legally trained and knew the legal position when he committed his offences.

88 Counsel referred to *T T Durai v Public Prosecutor* [2007] SGDC 334 where the accused was tried on one charge under section 6(c) of the Prevention of Corruption Act. There, a district court accepted that the accused worked extensively for the NKF and kidney dialysis patients and that such contributions made by a person to society ought to be taken in the balance because they showed erstwhile good character. Counsel submitted that SMY's offence of criminal breach of trust was essentially a technical breach of the law and that any imprisonment term imposed on SMY should not be more severe than the 3 months' imprisonment in *T T Durai v Public Prosecutor*.

89 It was further argued that although the funds in Ren Ci came from public donations, a heavy sentence would discourage people from serving on charitable bodies and cause them to choose the

more lucrative work in private entities. Moreover, SMY had already seen shame and embarrassment and had to suffer the further indignity of being parodied and ridiculed on stage. Reference was made to *Wuu David v Public Prosecutor* [2008] 4 SLR 83 where Chan Sek Keong CJ said that for one-off offenders, prosecution for the offence would in itself provide some form of general deterrence in most cases and that in some cases, the shame and embarrassment to family and friends could have a more powerful effect than the sentence itself. Counsel submitted that a fine instead of imprisonment could be ordered under section 477A Penal Code and pointed out that the false information charges were actually compoundable.

90 The prosecution argued that the “clang of the prison gates” principle did not apply to SMY as he had used his position of eminence to commit the offences. As stated by Yong CJ in *Wong Tiew Yong and Another v Public Prosecutor* [2003] 3 SLR(R) 325 at [58]:

the fact that [the appellant] had abused this very position of eminence to commit the offences took him out of the exceptional category of persons to whom the principle applies. [The appellant] could not argue that, since he fit this exceptional category very neatly, he could therefore avail himself of the principle. Such an argument mocks the rationale behind the “clang of the prison gates” principle. As a matter of logic, such an argument must fail. A person who had abused his status of eminence to commit an offence should not then be allowed to use that very status to his advantage.

91 An appellate court may correct sentences where (a) the sentencing judge has erred as to the proper factual basis for the sentence; (b) the sentencing judge has failed to appreciate the material placed before him; (c) the sentence imposed is wrong in principle and/or law; or (d) the sentence imposed is either manifestly excessive or manifestly inadequate: *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR (R) 653 at [13], cited in *Whang Sung Lin v Public Prosecutor* [2010] SGHC 53 at [40]. A sentence is said to be manifestly excessive or inadequate when “the sentence is unjustly lenient or severe, as the case may be, and requires substantial alterations rather than minute corrections to remedy the injustice”: *Public Prosecutor v Siew Boon Loong* [2005] 1 SLR(R) 611 at [22].

92 The DJ took into account SMY’s record of public service and contributions to society and acknowledged that in some areas, SMY’s efforts went beyond those of a normal CEO (GD on Sentence at [23]-[28]). However, the DJ also took into account the fact that the offences involved an abuse of authority and a betrayal of the trust placed in SMY as CEO and Chairman of Ren Ci. This has been recognised by the courts as a serious aggravating factor that might outweigh factors which would otherwise go towards mitigation: *Balakrishnan S and another v Public Prosecutor* [2005] 4 SLR(R) 249 at [137]. Furthermore, SMY gave false information in an attempt to cover up the offences which increased the seriousness of the offences.

93 I accept that misuse of funds in a charitable organization is a serious offence and that the amount involved in this case was not a small one. There was restitution but only when the authorities began to look into Ren Ci’s financial matters. While no one has the right to demand that SMY live an ascetic life and forego modern facilities, it was certainly not right for SMY to have treated Ren Ci’s funds the way he did in this case. However, it is public knowledge that SMY has risked life and limb in the much publicised efforts to raise funds for Ren Ci. He did not have to perform the dangerous stunts himself but chose to do so nonetheless. The sceptic would of course scoff at his efforts as the manifestation of an egoistic, publicity-seeking man. That would be entirely unfair and unkind. How many among us are willing to undertake those risks to satisfy our egos? If some comment sarcastically that the funds raised were abused by SMY anyway, it must be remembered that what has been proved in this case is that the amount of \$50,000, and that amount only, was dispensed as an

unauthorised loan. There are outstanding charges against SMY but they are not the subject of this case and have not been proved. I emphasize that I consider the sentences in this case on only the facts adduced here and nothing beyond. I do not think it is disputed that the millions of dollars raised from public donations have been utilised by Ren Ci over the years for poor and chronically ill people.

94 In the sentencing process, the court is sometimes faced with the arduous task of deciding the punishment for a dishonourable act committed by an otherwise honourable person. In William Shakespeare's *Julius Caesar*, Mark Antony famously said:

The evil that men do lives after them,

The good is oft interred with their bones,

... .

In my opinion, one wrongdoing does not have to be so overwhelming that the many good deeds are completely forgotten and interred with the bones. Even the prosecution has fairly and correctly accepted that SMY did a lot of good for Ren Ci.

95 While the DJ was correct in noting that the court has to balance the offender's achievements against the seriousness of the offence (GD on Sentence at [19]), I think he accorded too little weight to SMY's contributions to society, in particular, the well-being of the poor and chronically ill in Ren Ci. It was essentially a case of criminal breach of trust attended by the related offence of trying to mask the unauthorised loan and later by the offences of giving false information under the Act when the misdeed was being investigated. A custodial sentence is warranted here as there was no admission of the wrongdoing and efforts had been made by both SMY and RY to present a false picture to the authorities. The restitution of the \$50,000 also came about only after the authorities started looking into Ren Ci's records. However, an aggregate of 10 months' imprisonment for SMY, a sentence higher than that imposed on the recipient of the money who obviously was equally involved in the whole episode and whose credentials were nowhere as sterling as SMY's, appears to me to be manifestly excessive.

96 The false information charges involved the "knowingly" limb rather than the "recklessly" one. They are therefore more serious in nature. However, the culpability for SMY's Third Charge and for SMY's Fourth Charge are not really different – both charges concern giving false information under the Act, with the only distinction being the mode of such information. The latter was a continuation of the earlier falsehood. The sentence in respect of SMY's Third Charge therefore should not be twice that for SMY's Fourth Charge. Accordingly, I alter the imprisonment term for SMY's Third Charge from 4 months to 2 months, the term imposed by the DJ for SMY's Fourth Charge.

97 Further, I order the imprisonment terms for SMY's Second Charge (4 months) and Third Charge (now 2 months) to run consecutively, making an aggregate of 6 months' imprisonment. The imprisonment terms for the other two charges (6 months and 2 months respectively) are to run concurrently with the two consecutive terms. SMY's appeal against sentence is therefore allowed in that the aggregate imprisonment term is now 6 instead of 10 months.

### **RY's appeal against sentence**

98 Counsel for RY submitted that the sentence passed by the DJ was manifestly excessive as he had failed to accord proper weight to the following mitigating factors:

- (a) RY was a first time offender;
- (b) RY contributed significantly to the Buddhist scene in Singapore and other jurisdictions; and
- (c) RY's good character, with several persons having provided letters of character reference attesting to this.

99 One has to take into account the fact that it was RY who asked for a loan and received a benefit as a result of the offence. He and SMY then tried to cover up the wrongdoing. But for the investigations into Ren Ci's accounts, one wonders whether or when the loan would be repaid to Ren Ci. While RY was convicted on only two charges, the evidence showed that he was actively and completely involved in the wrongdoing and attempted cover-up from beginning to end. He was also instrumental in getting the untrue BJJHS Letter even after his resignation from Ren Ci. Moreover, RY's contributions to Ren Ci and to society paled in comparison with SMY's. In view of these factors, it could not be said that the aggregate imprisonment term of nine months imposed by the DJ was unjustly severe. I therefore dismiss RY's appeal against sentence.

100 Finally, I thank all counsel involved in these appeals for their very helpful written and oral submissions.

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[\[note: 1\]](#) Exhibit P 8.

[\[note: 2\]](#) Exhibit D1-10.

[\[note: 3\]](#) Exhibit D1-2.

[\[note: 4\]](#) Exhibit D1-4.

[\[note: 5\]](#) Exhibit D1-5.

[\[note: 6\]](#) Exhibit P 12.

[\[note: 7\]](#) Exhibit P 20 Question and Answer 1611.

[\[note: 8\]](#) See Notes of Evidence for 3 April 2009 at 19-21.

[\[note: 9\]](#) Exhibit P 15, Question and Answer 196, 197.

[\[note: 10\]](#) Exhibit P 19, Question and Answer 1558- 1560.

[\[note: 11\]](#) See Notes of Evidence for 6 April 2009 at 10, 11, 17.

[\[note: 12\]](#) Exhibit D1-31, Question and Answer 1511.

[\[note: 13\]](#) Exhibit P2.

[\[note: 14\]](#) Exhibit P 9 at 76- 86.

[\[note: 15\]](#) Exhibit P 4.

[\[note: 16\]](#) Exhibit P 5.

[\[note: 17\]](#) Exhibit P 6.

[\[note: 18\]](#) Exhibit P 16, Question and Answer 204, 216.

[\[note: 19\]](#) Exhibit D1- 31, Question and Answer 1511, 1512.

[\[note: 20\]](#) Exhibit D2-1.

[\[note: 21\]](#) See Notes of Evidence for 24 July 2008 at 26-29 and 29 July 2008 at 73-94.

[\[note: 22\]](#) Exhibit P 16, Question and Answer 216 and 217.

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