

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 29

Magistrate's Appeal No 9066 and 9067 of 2018/01

Between

Public Prosecutor

... Appellant

And

- (1) Leow Ban Leong
- (2) Foo Fang Liong

... Respondents

Magistrate's Appeal No 9066 and 9067 of 2018/02

Between

- (1) Leow Ban Leong
- (2) Foo Fang Liong

... Appellants

And

Public Prosecutor

... Respondent

EX TEMPORE JUDGMENT

[Criminal Law] — [Offences] — [Falsification of accounts]

[Criminal Procedure and Sentencing] — [Sentencing] — [Principles] —
[Falsification of accounts]

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Public Prosecutor
v
Leow Ban Leong and another and another appeal

[2019] SGHC 29

High Court — Magistrate's Appeal 9066 and 9067 of 2018/01, Magistrate's Appeal 9066 and 9067 of 2018/02

Chan Seng Onn J

30 November 2018; 12 February 2019

12 February 2019

Chan Seng Onn J (delivering the judgment of the court *ex tempore*):

1 The first respondent in Magistrate's Appeal ("MA") 9066 and 9067 of 2018/01 and the first appellant in MA 9066 and 9067 of 2018/02, Leow Ban Leong ("Leow"), is the chief executive officer of Prelim Construction Pte Ltd ("Prelim") and a director cum shareholder of Advance Facilities Pte Ltd ("Advance"). These are related companies.¹ Prelim and Advance are two of many companies within the "Master" group of companies, which are controlled by Leow.² The second respondent in Magistrate's Appeal ("MA") 9066 and 9067 of 2018/01 and the second appellant in MA 9066 and 9067 of 2018/02, Foo Fang Liong ("Foo") is a senior manager at both Prelim and Advance.³ Given that this *ex tempore* judgment deals with Leow and Foo's appeals against their

¹ *Public Prosecutor v Leow Ban Leong and another* [2018] SGDC 157 ("GD"), [1].

² Transcript, 19 September 2017, p 3, lines 5 – 12 (ROP, p 1077).

³ ROP, p 2832, qns 48 and 49.

conviction, I will, for convenience, refer to them collectively as “the appellants”. The appellants each faced three charges under s 477A read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed), for engaging in a conspiracy to falsify company documents. After a joint trial, they were both convicted on all three charges. Leow was fined a total of \$90,000 (\$30,000 fine per charge), while Foo was fined a total of \$45,000 (\$15,000 fine per charge).⁴ Leow and Foo subsequently filed appeals against their conviction, while the Prosecution filed cross-appeals against the sentences imposed.

Appeals against conviction

2 Having heard the parties’ submissions, I do not think that the trial judge’s findings on the whole are against the weight of the evidence. Accordingly, I dismiss Leow and Foo’s appeals against conviction. In particular, I agree with the trial judge that Foo and Leow had both acted on the basis that the “Term Contract” would apply to the Floating Sea Barrier Project (“FSB Project”), which would require Prelim to charge for the buoys only on a cost-plus basis. I say this for three reasons. First, the *only* contract governing the relationship between Prelim and the Police Coast Guard (“PCG”) was the Term Contract. Second, Leow’s statement to the Commercial Affairs Department suggests that he had believed the Term Contract would apply to the FSB Project.⁵ Third, Prelim made reference to the Term Contract in the authentic “Form D9” that was submitted to the Auditor-General’s Office (“AGO”).⁶ In fact, Form D9 itself was a feature unique to the Term Contract. Form D9 was a declaration by Prelim to the Ministry of Home Affairs (“MHA”) that the price quoted was the net price paid to its supplier (after deducting trade

⁴ GD, [4] and [6].

⁵ ROP pp 2625 – 2626, qn 22.

⁶ ROP, p 2909.

discounts), and that it had not suppressed any information to the disadvantage of the government.⁷

3 Even if it were the case that the Term Contract was rendered inapplicable because the supply and/or services (if any) to be provided as part of the FSB Project were outside the scope of the Term Contract, there was nothing to prevent the parties from agreeing to a separate *ad hoc* contract that would be governed by terms similar to the Term Contract, such that the pricing was also to be on a cost-plus basis. This was a term that the contracting parties would have been familiar with.

4 According to the appellants, it was one Benson Tan (“Benson”), an agent of PCG, who initially prepared a quotation dated 12 February 2010 (“Quotation”) using Prelim’s letterhead without first seeking the authorisation of Prelim.⁸ The price quoted was \$2,500 plus 5% per buoy in this Quotation.⁹ After PCG approved the purchase based on the price stated in the Quotation, Benson informed Prelim to proceed based on the Quotation.¹⁰

5 Prelim then negotiated with its supplier of the buoys, Wealth Marine Pte Ltd (“Wealth Marine”) and managed to negotiate the price of the buoys down to \$1,500 per buoy.¹¹ Thereafter, Prelim agreed to perform the contract based on the Quotation drawn up by Benson. Prelim accordingly charged PCG \$2,500 plus 5% per buoy.¹²

⁷ ROP, p 2106.

⁸ Appellants’ submissions for appeal against conviction (“ASC”), paras 30 and 31.

⁹ ROP, p 2492.

¹⁰ ROP, pp 2489 – 2491.

¹¹ GD, [30]; ROP, p 3112 – 3114.

¹² GD, [32]. See also ROP, p 2488.

6 Taking Prelim's case at the highest, it is clear that by agreeing subsequently to perform the contract in accordance with the terms stated in the Quotation, albeit prepared initially by Benson, Prelim had in fact ratified what Benson had done, adopted the Quotation on its letterhead as its own and therefore confirmed that the contract with PCG would be performed in accordance with that Quotation.

7 It is significant to note at this juncture that there was an asterisk marked in the Quotation next to the item for the buoys to indicate that it was to be on a cost-plus basis as would be under the Term Contract.¹³ Upon accepting to perform the contract as per the Quotation, Leow and Foo must have known at least by this time (if not even earlier) that they would be overcharging PCG as the cost-plus basis of charging would have only allowed them to charge at \$1,500 plus 5% per buoy and not \$2,500 plus 5% per buoy. Despite this, they proceeded to ensure that PCG was charged a cost-plus price of \$2,500 plus 5% per buoy, which was in fact known to them to be wrong. The fact stated in the Quotation (which was ratified by them) therefore falsely represented \$2,500 plus 5% per buoy as the true cost-plus price of the buoys. However, the true cost-plus price should have been \$1,500 per buoy from its supplier plus 5% and no more.

8 Therefore, when the AGO asked for supporting documents to prove that Prelim had indeed purchased the buoys from its supplier Wealth Marine at what purported to be \$2,500 per buoy, Leow and Foo decided to fabricate supporting documents on the letterhead of Prelim's related company Advance. This was to make it seem as though the overall average cost of the buoys was \$2,500 each because some extra services provided by Advance had to be included to the cost

¹³ ROP, p 2060, para 6.3; ROP, p 2492.

of the buoys.¹⁴ To my mind, there were two likely reasons for this. First, Leow and Foo wanted to retain the additional \$1,000 per buoy which they had overcharged PCG and therefore they ingeniously disguised them as extra services (eg, some fictitious warranties) per buoy in the fictitious invoice documents of Prelim's purported supplier Advance.¹⁵ Second, Leow and Foo wanted to cover up the overcharging and falsification of the cost-plus price of \$2,500 plus 5% charged per buoy in order to preserve Prelim's reputation with PCG (and ultimately the MHA).¹⁶

9 I note the appellants' argument that the Prosecution's case theory, *ie*, that the appellants had committed the offence to protect their reputation, was never put to Leow or Foo during cross-examination. However, Leow had stated several times that the MHA was a long-time client for whom Prelim would go the extra mile,¹⁷ and that since Prelim had committed to PCG it had to maintain its reputation.¹⁸ Hence, the court is entitled to draw the necessary inferences based on the evidence before it.

10 It is undisputed that the actual supplier of the buoys was Wealth Marine. Indeed, Prelim had initially submitted a Form D9 to the AGO which declared Wealth Marine as the supplier of the buoys. However, Leow and Foo deliberately suppressed the invoice from Wealth Marine which would have clearly showed that Prelim had purchased the buoys for only \$1,500 each. Instead, Leow and Foo fabricated and submitted an invoice,¹⁹ claim form²⁰ and

¹⁴ ROP, p 2528.

¹⁵ ROP, p 2833, qn 54; Transcript, 20 September 2017, p 9, lines 21 – 23 (ROP, p 1240); GD, [128].

¹⁶ Transcript, 19 September 2017, p 69, lines 19 – 25 (ROP, p 1143).

¹⁷ Transcript, 19 September 2017, p 66, lines 5 – 8 (ROP, p 1140).

¹⁸ Transcript, 19 September 2017, p 65, lines 1 – 4 (ROP, p 1139).

Form D9²¹ (collectively, the “offending documents”) which falsely specified Advance as the supplier of the buoys.

11 The appellants’ case is that they had created the offending documents to satisfy Benson’s incessant requests for supporting documents to show that the buoys were purchased by Prelim for \$2,500 each, which was false.²² However, the appellants submit that their intention was never to deceive the AGO, which is why they made sure to indicate on the Advance invoice that the price per unit of the buoys remains at \$1,500.²³

12 Taking the appellants’ case at its highest, all this goes to demonstrate that there was one isolated fact stated in the offending documents, which only when completely taken out of context would be correct, *ie*, the cost price was indeed \$1,500 per buoy. But this ignores the fact that the fictitious documents tendered to AGO fraudulently misrepresented to the AGO that the supplier of the buoys to Prelim was Advance when in fact it was Wealth Marine. Further, the fictitious documents fraudulently misrepresented to the AGO that there was a three-year extended warranty provided by Advance to Prelim in respect of the 91 buoys for which PCG had to be additionally charged. In fact, no such extended warranty was asked for nor agreed to by PCG. The fictitious three-year extended warranty was inserted to artificially boost the overall *average* price per buoy to \$2,500, a figure that the appellants were anxious to show to AGO on the supporting documents in order to match the cost-plus price Prelim had charged to PCG of \$2,500 plus 5% per buoy as per the Quotation.

¹⁹ ROP, p 2529.

²⁰ ROP, p 2528.

²¹ ROP, p 2844.

²² ASC, para 93.

²³ ASC, para 134.

13 Accordingly, I agree with the trial judge that this extended warranty was entirely fictitious, and was merely meant to justify the additional \$1,000 that Prelim had charged PCG for each of the buoys. The trial judge found that there was no evidence to show that Prelim and PCG had ever discussed the issue of an extended warranty. In this regard, the trial judge was right to reject the Defence's contention that Advance had genuinely intended to provide Prelim with an extended three-year warranty.

14 Apparently, Prelim paid its related company Advance \$136,500 for 91 buoys at \$1,500 per buoy and also \$91,000 for the additional services which included the extended three-year warranty for the 91 buoys at \$1,000 per buoy.²⁴ The question is whether this is real or yet another fictitious transaction to lend support to the price of \$2,500 plus 5% per buoy Prelim had charged PCG. I find it puzzling why Prelim would have wanted to make double payment for the buoys *ie*, once to Wealth Marine²⁵ and once to Advance. Indeed, Leow accepted that it made no commercial sense for Prelim to have done so.²⁶ I infer that the payment of \$136,500 (based on 91 buoys at \$1,500 per buoy) and \$91,000 (for additional services) by Prelim to its related company Advance was intended to create some evidence of a payment trail to support the false fact stated in the fictitious invoice from Advance of having purportedly supplied the 91 buoys to Prelim for \$1,500 per buoy when in fact it did not. This shows the devious methods and extent to which the appellants were trying to mask their misdeeds from the AGO and prevent discovery.

15 I also do not consider it necessary to find whether the false documents were prepared on the instructions of Benson or otherwise. I agree with the trial

²⁴ ROP, p 2529.

²⁵ ROP, p 2526.

²⁶ Transcript, 20 September 2017, p 23, lines 16 – 20 (ROP, p 1254).

judge that even if Benson had instructed Leow and Foo to create the false documents, they would still be liable for the abetment of the offence.²⁷

16 Ultimately, Leow and Foo had fabricated the offending documents intended to be eventually forwarded by Benson for presentation to AGO, which they knew to contain false information. Therefore, the *actus reus* of the offence under s 477A is made out, which the appellants do not dispute. The *mens rea* of the offence has two components, namely the intention to deceive, and intention to gain some advantage or benefit. To my mind, the appellants had intended to use these offending documents to mislead and deceive the AGO into thinking that Advance was the actual supplier of the buoys when it was not the case, and further, that the \$2,500 cost of each buoy was comprised of \$1,500 for the buoy itself that Advance had itself supplied to PCG plus an additional \$1,000 for a fictitious extended warranty and some other services for the buoys. This then purportedly allowed Advance to charge Prelim an average price of \$2,500 per buoy. Further, the offending documents, if believed by the AGO to be true with regard to all the facts stated therein, would have allowed Prelim to retain the additional \$1,000 per buoy. This is because it would have justified to the AGO that the overall cost price was \$2,500 per buoy plus 5% that was charged to PCG as per the terms of the Term Contract on a cost-plus basis. Therefore, the intention to gain a benefit is clear even without me having to find that their intention was to avoid reputational damage. Accordingly, I see no reason to overturn the judge's decision to convict Leow and Foo and I dismiss the appeals against conviction.

17 I will now hear the submissions of the parties on sentence.

²⁷ GD, [128].

Chan Seng Onn
Judge

Gordon Oh, Jiang Ke-Yue and Magdalene Huang (Attorney-General's Chambers) for the appellant in MA 9066 and 9067 of 2018/01 and the respondent in MA 9066 and 9067 of 2018/02; Cavinder Bull, S.C. and Vikram Rajaram (Drew & Napier LLC) (instructed counsel) / Edwin Lee Peng Khoon and Pramnath Vijayakumar (Eldan Law LLC) (instructing counsel) / Kang Kok Boon Favian (Peter Low & Choo LLC) (instructing counsel) for the respondents in MA 9066 and 9067 of 2018/01 and the appellants in MA 9066 and 9067 of 2018/02.
