## DCCC 318/2024

[2025] HKDC 331

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

CRIMINAL CASE NO 318 OF 2024

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HKSAR

v

NG WAI MAN

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Before: Deputy District Judge Amy Chan

Date: 28 February 2025

Present: Ms Lai Karinna, Senior Public Prosecutor, for HKSAR

Ms Ho Vanessa H Y, instructed by GT Lawyers, assigned by DLA, for the defendant

Offence: [1] to [7] Fraud（欺詐罪）

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REASONS FOR SENTENCE

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1. The defendant (“D”) pleaded guilty to 7 charges of Fraud, contrary to section 16A of the [Theft Ordinance, Cap 210](https://www.elegislation.gov.hk/hk/cap210).

*The Facts*

1. Mr Leung (“PW1”) got acquainted with D in March 2020. Between November 2020 and June 2021, D made 7 bogus business proposals and lured PW1 into making investments in the total sum of $1,021,000. During the same period of time, PW1 had received small sums of purported profit totaling $199,500 from D.

*The 1st and the 2nd Charges – forgo a debt repayment of $100,000 and payment of $350,000*

1. On 23 November 2020, D told PW1 that he was a manager of a logistics company. D made false representations to PW1 that the business was profitable. The total investment was $200,000. PW1 and D would each contribute $100,000. The investment would be kept by the logistics company as deposit only and would be returned to them when they ceased to operate the business.
2. PW1 was interested in the bogus proposal and agreed to make the investment. As PW1 had previously lent $100,000 to D, PW1 agreed to D’s suggestion that D was not required make repayment of the debt to PW1 and the debt would be offset by PW1’s share for the warehouse business. PW1 also agreed to let D take charge of the warehouse business.
3. After PW1 had agreed to forgo the debt repayment of $100,000 involved in the 1st Charge, D made further false representations to PW1 that there was genuine business of undertaking 2 further warehouses owned by the logistics company. The purported investments for the 2 warehouses would be $200,000 and $150,000 respectively. D emphasized that these sums of money would be kept as deposits only, and would be returned to them when they ceased to carry on the business. D asked PW1 to pay for his share of the investment for the time being. PW1 agreed. Hence, PW1 transferred a total sum of $350,000 into D’s bank account.
4. D had transferred a total sum of $77,000 into PW1’s bank account as the purported profit.

*The 3rd Charge – payment of HK$150,000*

1. On 11 January 2021, D told PW1 that his elder brother “Ah Man” was a manager of a cleansing company. Since the cleaning company decided not to take up the cleansing service at the quarantine area in the Asia World Expo, D made false representations to PW1 that they could undertake this cleansing business and the investment was in the sum of $150,000. D further claimed that the investment was only a deposit, and would be returned to PW1 after the cleansing business had ended. The expected profit was $20,000 per month.
2. PW1 was interested in the bogus proposal and agreed to invest. PW1 thus paid a total sum of $150,000 to D. PW1 received a total of $51,000 from D as the purported profit.

*The 4th Charge – payment of $109,000*

1. In January 2021, D made a false representation to PW1 that there was genuine logistics business involving delivery of goods. The business was profitable and they could earn $33,000 per week.PW1 was interested in the said business and paid a total sum of $109,000 into the bank accounts. D had returned a total sum of $71,500 to PW1 as the purported profit.

*The 5th Charge – forgo payment of $40,000*

1. On a day unknown in February 2021, D made a false representation to PW1 that there was genuine logistics business. D proposed PW1 to make investment in this logistics business for the delivery of electronic cigarettes. D alleged that PW1 only needed to invest a sum of $40,000 as the deposit and carried on the business of delivering the cigarettes to a warehouse in Tsuen Wan. PW1 would earn a profit of $10,000 per month.
2. PW1 did not have to make any actual payment for this investment because the sum could be deducted from the profits that he made from the investment involved in the 1st to the 4th Charges. PW1 was interested in the proposal and agreed with D’s arrangement.

*The 6th Charge – payment of $210,000*

1. In March 2021, D made a false representation to PW1 that there was genuine logistics business involving delivery of goods for Taobao. D proposed PW1 to invest in this logistics business for delivering goods for Taobao to the airport and sending the goods to Taiwan by a courier flight. D told PW1 that he only needed to pay a sum of money to the Airport Authority Hong Kong as the deposit, and the investment would be refunded if they decided to cease the business. The estimated profit would be $30,000 per week. Acting on D’s representations, PW1 transferred a total of $210,000 to D’s bank account. PW1 did not receive any profit or money from D for this investment.

*The 7th Charge – payment of $62,000*

1. In June 2021, D made a false representation to PW1 that there was genuine logistics business involving delivery of goods for Huawei. D explained that the business was to provide cross-border logistics services between Hong Kong and the Mainland for Huawei. D requested PW1 to invest $62,000 in the business and, in return, PW1 would get a profit of $10,000 each month. PW1 was interested in the purported proposal and paid cash of $62,000 to D on 17 June 2021.
2. On 15 July 2021, PW1 asked D to hand over the full business records of the above-mentioned investments for inspection. D went to PW1’s home for discussion and signed an “IOU”, which stated that D owed a total sum of $2,100,000 to PW1. D undertook to return the sum by 30 September 2021, or otherwise D had to pay an interest of 5% of the outstanding debt. At the end, no repayment was made. The case was thus reported to the police.

*Criminal record*

1. D has one criminal record for theft in 2010 and was sentenced to 160 hours of community service and a fine of $1,000.

*Background and Mitigation*

1. D is now 41 years old, single and lives with his elderly mother. She suffers from dementia. Although D has three elder siblings, he is the only child living with his mother. Prior to his arrest, he was the main care giver to his mother on a day to day basis in all aspects of daily life. Since D’s incarceration, the care of his mother is therefore left with his two elder sisters.
2. D committed the offence out of financial desperation. He had accumulated a large amount of debt due to his loss of full time employment in April 2020 as a result of the pandemic of Covid-19. At the time of arrest, D was working part-time at a dispensary earning HK$8,000 per month, unfortunately this was insufficient to meet the household needs and debt repayments.
3. Prior to the D’s arrest he has contributed to charity contributions with a total of $1,000 on five occasions in 2022.
4. D emphasized his remorse but he is unable to make any restitution to PW1.
5. His siblings have written a mitigation letter for D. They all support him and hope for leniency.
6. Defence relies on *HKSAR v Cheung Mei Kiu* CACC 99/2006 and submits that for the net loss of $821,500 suffered by PW1, the appropriate starting point is 33 months’ imprisonment according to the guidelines on a pure mathematical calculation.

*Discussion*

1. Fraud is a very serious offence. The maximum sentence is 14 years’ imprisonment.
2. In this case, D made various bogus business proposals to PW1. Relying on the representations made by D, PW1 was lured to make investments involving a total sum of $1,021,000 to D in the span of approximately 7 months.
3. In *HKSAR v Chong Hung Shek* [2019] 2 HKLRD 937, the Court of Appeal stated that the amount of the fraud particularized in the charges should determine the appropriate sentencing band while the actual loss was simply a matter of mitigation.
4. Therefore, I reject Defence’s submission to sentence D on the basis of PW1’s actual loss of $821,500.
5. In my view, the sentence should be based on the total sum of $1,021,000 instead on the net loss of $821,500. In Charges 2, 3 and 4, D initially distributed profits of $199,500 to PW1 which effectively encouraged and enticed him to continue to invest further. D was thus able to perpetuate more fraud. In Charges 1, 5, 6 and 7, PW1 never received anything in return at any stage.
6. The sentencing guidelines for the offence of theft involving breach of trust cases laid down by the Court in *Cheung Mei Kiu* involving $1 million to $3 million is 3 to 5 years.
7. However, I do not agree the guidelines in *Cheung Mei Kiu* apply in this case. In cases involving deception, the sentence depends on the nature of the fraud exercised on the victim. Each case or each sentence shall be determined on a case to case basis.
8. In this case, it was not a breach of trust scenario. D befriended PW1 but was in reality deceiving him. D breached the trust placed in him by PW1 who expected him to invest his money. D never invested as promised.
9. There was a degree of sophistication in the fraud exercised on PW1 in the short time span of 7 months. The court must take into account that D was acting with premeditation and persistence. D made 7 bogus business proposals to PW1. As a result, PW1 had paid $1,021,000 to D. The actual substantial loss sustained by PW1 was $820,000.
10. It is likely that PW1 is unable to recover his loss.
11. I note that D’s mother suffers from dementia. D should have taken this into consideration before committing these offences and so his family plight could not be of assistance to him in mitigation.
12. Having considered the facts of this case and the factors mentioned above, I am going to adopt a starting point for each charge as below. D’s guilty plea entitles him to receive a one-third reduction in his sentence.

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| **Charge** | **Loss of PW1** | **Starting point of sentence (months)** | **Sentence after 1/3 discount (months)** |
| 1 | $100,000 | 9 | 6 |
| 2 | $350,000 | 21 | 14 |
| 3 | $150,000 | 10.5 | 7 |
| 4 | $109,000 | 9 | 6 |
| 5 | $40,000 | 3 | 2 |
| 6 | $210,000 | 12 | 8 |
| 7 | $62,000 | 4.5 | 3 |

1. Having taken into account D’s background and all that was said on his behalf in mitigation, I find there is nothing which warrant any further reduction in sentence.
2. The offences were committed on different occasions. They were separate and distinct acts. The sentences should, in principle, run consecutively. I have taken into consideration for the duration of the offences, the total amount of money that PW1 was deceived and his actual loss. Applying the totality principle, I consider that an overall term of 26 months should sufficiently reflect the criminality involved in this case.
3. I therefore order a 2 months in respect of Charge (1), Charge (3) to Charge (7) are to run consecutively to the term of 14 months in respect of Charge (2), with the remaining terms to run concurrently, making a total of 26 months’ imprisonment (14 + 2 x 6).
4. D is to serve a total of 26 months’ imprisonment.

( Amy Chan )

Deputy District Judge