Goldring, Timothy Nicholas *v* Public Prosecutor and other appeals
[2015] SGHC 158

Case Number : Magistrate's Appeals No 121-122 of 2014/01-02

Decision Date : 11 June 2015

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : The appellants in MA 121-122/01 and respondents in MA 121-122/02 in person; Sandy Baggett, Kevin Yong and Nicholas Khoo (Attorney-General's Chambers) for the respondent in MA 121-122/01 and the appellant in MA 121-122/02.

Parties : Goldring, Timothy Nicholas — Public Prosecutor

Criminal law – Offences – Property – Cheating

Criminal law – Complicity – Criminal conspiracy

Criminal procedure and sentencing – Sentencing

11 June 2015 Judgment reserved.

Tay Yong Kwang J:

Introduction

1 This case is one of those that lie at the crossroads of criminal law and contract law. Can a non-reliance clause negate the element of inducement required to establish an offence of cheating? This is one of the many issues that arose in these cross-appeals from the decision of the District Judge ("the DJ") in *Public Prosecutor v Timothy Nicholas Goldring, Geraldine Anthony Thomas and John Andrew Nordmann* [2014] SGDC 422 ("GD").

2 Three accused persons, Timothy Nicholas Goldring ("Goldring"), Geraldine Anthony Thomas ("Geraldine") and John Andrew Nordmann ("Nordmann"), were charged with 86 counts of conspiring to cheat by inducing delivery of property under s 420 read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed) ("PC"). They claimed trial to 18 charges and the other 68 charges were stood down. After the trial, Geraldine was acquitted in respect of her charges. Goldring and Nordmann (collectively the "Appellants") were convicted on those 18 charges (which were amended to delete the references to Geraldine) and sentenced to seven and eight years' imprisonment respectively. Both Appellants have appealed against their convictions and sentences while the Prosecution has cross-appealed against the Appellants' sentences. The Prosecution also appealed against Geraldine's acquittal but that appeal has been discontinued. [note: 1]

3 After reserving my decision, I now dismiss all the appeals for the reasons set out in this judgment.

Background facts

4 The Appellants were directors and shareholders of Profitable Plots Pte Ltd ("PPPL"). PPPL was incorporated in Singapore in 2005 and it generally offered land investment opportunities. Its repertoire

of products grew in 2008 when it introduced an array of fuel additives and lubricants ("Boron Products"). These Boron Products were produced by an American company, Advanced Lubrication Technology Inc ("ALT"), which gave exclusive distributorship rights in certain territories to Profitable Group Limited ("PG Dubai"), a Dubai-incorporated company whose directors and shareholders included the Appellants. This agreement obligated PG Dubai to purchase a minimum amount of Boron Products each year for four years (it was US$2.5m for the year beginning October 2008). As PG Dubai had no staff, active business or physical address, Goldring executed an agreement for PPPL to market and sell the Boron Products. Around that time, PPPL also acquired a UK company, Vawtech Ltd ("Vawtech"), which held the exclusive distributorship rights for Boron Products in UK.

5 For the purported purpose of funding inventory purchases of Boron Products, PPPL introduced an investment scheme in November 2008 called the "Boron Scheme". Each investment unit was $1,000 and investors were promised a return of 12.5% on the principal amount invested within a maximum of six months from the date of investment. When the Boron Scheme was marketed to the public, there were two representations that were made and which were false, namely, that the money invested would be *used exclusively* to finance the purchase of Boron Products and that the Boron Products had been *pre-sold* to major corporations (respectively the "Exclusive Use Representation" and "Pre-Sold Representation" and collectively the "Representations"). Both Representations were communicated to the investors mostly via sales agents using various means including a set of presentation slides (the "Boron Slides") and a marketing brochure (the "Boron Brochure"). There were three versions of the Boron Brochure dated November 2008, May 2009 and September 2009 respectively. The second version merely changed the investment quantum from US$1,000 to US$10,000 and the third changed the maturity period from six months to twelve. In addition to these materials, there was also a set of scripted answers to frequently asked questions ("Boron Scripts") prepared by Nordmann and made available to sales agents, although not many used them.

6 Generally, to invest in the Boron Scheme, each investor had to fill in a Product Request Form ("PRF") indicating the product and the quantity he or she was interested in. The investor would then deliver money to PPPL (or another Profitable Group entity) or convert an existing investment to a Boron Scheme investment or do a combination of both. In turn, he or she would receive a Transfer of Title form ("TB1") which served as the contract. The counterparty named in the TB1 was the inactive entity, PG Dubai.

7 The investors referred to in the 18 proceeded charges ("the Investors") were given and did rely on the Representations before investing in the Boron Scheme. The Investors invested in their own names, except for two (the details of whom I will elaborate on later).

8 At the end of the six-month window, the Investors failed to receive their returns as promised. Some were told that the company was waiting for certain pieces of land in the Philippines to be sold. Others were told that their investments were with PG Dubai and that PPPL was merely the marketing agent. They did not receive their investment monies back. Eventually, complaints were made and the Appellants were charged with conspiring to cheat.

Proceedings below

9 It was the Prosecution's case that the Appellants, knowing that the Representations were false, conveyed or authorised others to convey them to the Investors. The charges against the Appellants on which the Prosecution proceeded (before they were amended upon the acquittal of Geraldine) were similarly framed. They read (with the necessary modifications):

> "… are charged that you, between November 2008 to August 2010, in Singapore, being a director

of Profitable Plots Pte Ltd ("the Company"), did engage with one [John Andrew Nordmann or Timothy Nicholas Goldring] and one Geraldine Anthony Thomas in a conspiracy to do a certain thing, namely, to cheat the customers of an investment scheme promoted by the Company ("the Boron Scheme"), in pursuance of that conspiracy and in order to the doing of that thing, an act took place, to wit, [on various dates] the Company, on your authorisation, represented to [an Investor] that money to be invested by [him or her] through an investment scheme offered by the company ("the Boron Scheme"), would be used exclusively to finance the purchase of Boron CLS Bond products that has purportedly been pre-sold to major corporations, which representation you knew to be untrue, and by such manner of deception, you dishonestly induced the said [Investor] into delivering a total sum equivalent to [the sum invested] to the Company to be invested in the Boron Scheme for a return of 12.5% within a maximum of 6 months, which [the Investor] would not have done if [he or she] was not so deceived, and which act was committed in consequence of your abetment, and you have thereby committed an offence punishable under Section 109 read with Section 420 of the Penal Code, Chapter 224 (2008 Revised Edition)."

10 At trial, Goldring and Geraldine elected to remain silent. Nordmann tried to distance himself from the Representations and the Boron Scheme. According to him, the Boron Scheme was the product of a discussion between John Gaunt and James Hodgson. John Gaunt was hired in September 2008 as PPPL's CEO to optimise PPPL's business at a time where it had diverse business interests. The sale of Boron Products was one of his responsibilities. However, he was fired in July 2009 by Goldring allegedly because he had not delivered the performance expected of him. James Hodgson was the marketing director and a director of PPPL from 2006 until May 2009, when he was removed at an extraordinary general meeting. It was alleged that James Hodgson instructed Cedric de Souza (the marketing manager) to add the Representations into the Boron Brochure without Nordmann's knowledge.

11 The DJ rejected Nordmann's defence. With regard to the two Appellants, he found that the three essential elements of cheating had been established beyond reasonable doubt (GD at [409]). First, the element of deception was satisfied because both Representations were false and the 18 Investors were deceived by the cumulative conduct of the Appellants and their agents (*ie*, PPPL's sales agents) that the Representations were true. Next, the element of inducement was satisfied because the Representations were among the reasons (even if not the predominant reason) the Investors invested in the Boron Scheme by delivering property to PPPL. Third, the element of dishonest intent was satisfied since the Appellants knew that the Representations were false. Nordmann, in particular, had come up with the Boron Scheme and the contents of the Boron Brochure (GD at [648]–[664]). The DJ was also satisfied that the Appellants had engaged in a conspiracy to cheat by abetment (GD at [544]–[548]). Both approved the Boron Scheme as directors and were directly responsible for setting up the Boron Scheme in various ways.

12 The DJ, however, found that Geraldine had no role in making or authorising the false representations (GD at [686]–[691]). He could not find, beyond a reasonable doubt, that she had any knowledge of whether Boron Products were sold before the launch of the Boron Scheme or throughout its duration. While Geraldine was a finance director and a signatory of PG Dubai's accounts, she acted on the Appellants' instructions.

13 Accordingly, the DJ convicted the Appellants on their charges but acquitted Geraldine on her charges. He then sentenced Goldring and Nordmann to a total of seven and eight years' imprisonment respectively.

14 Both the Appellants and the Prosecution, dissatisfied with the DJ's decision, appealed to the High Court. The Appellants appealed against conviction and sentence while the Prosecution appealed

against sentence.

The appeal against conviction

15 The law on the role of the appellate court in an appeal against conviction is settled. An appellate court may reverse a judgment only if it was wrong in law or against the weight of the evidence (s 394 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC")). In particular, with regard to findings of fact, the Court of Appeal in *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 summarised at [16]:

> 16 … an appellate court has a *limited* role when it is asked to assess findings of fact made by the trial court. In summary, the role is circumscribed as follows:
>
> (a) Where the finding of fact hinges on the trial judge's assessment of the credibility and veracity of witnesses based on the demeanour of the witness, *the appellate court will interfere only if the finding of fact can be shown to be plainly wrong or against the weight of evidence*: see *PP v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [32] and *Yap Giau Beng Terence v PP* [1998] 2 SLR(R) 855 ("*Yap Giau Beng* [*Terence*]") at [24]. An appellate court may also intervene, if, after taking into account all the advantages available to the trial judge, it concludes that the verdict is wrong in law and therefore unreasonable: *Jagatheesan s/o Krishnasamy v PP* [2006] 4 SLR(R) 45 ("*Jagatheesan*") at [43].
>
> (b) Where the finding of fact by the trial judge is based on the inferences drawn from the internal consistency (or lack thereof) in the content of witnesses' testimony or the external consistency between the content of their testimony and the extrinsic evidence, an appellate court is in as good a position as the trial court to assess the veracity of the witness's evidence. The real tests are how consistent the story is within itself, how it stands the test of cross-examination, and how it fits in with the rest of the evidence and the circumstances of the case: see *Jagatheesan* at [40]. *If a decision is inconsistent with the material objective evidence on record, appellate intervention will usually be warranted.*
>
> (c) *An appellate court is as competent as any trial judge to draw any necessary inferences of fact from the circumstances of the case*: see *Yap Giau Beng Terence* at [24].
>
> [emphasis added]

The arguments

16 The Appellants, in their petitions of appeal with 29 grounds of appeal each and written submissions totalling 377 pages, argue that the DJ was wrong in several ways and for a whole gamut of reasons. They also take issue with over 120 instances where they claim that the DJ and the Prosecution have misrepresented the evidence. [note: 2] I will not address every argument in a point-by-point manner. Many arguments are minor, [note: 3] are of little relevance to the real issues at hand and have been canvassed before the DJ whose decision and reasoning I agree with. Other arguments concern alleged procedural irregularities [note: 4] which, in my view, occasioned no injustice and did not affect the merits of the case. What I will focus on are the DJ's core findings which relate to the elements of conspiring to cheat under s 420 read with s 109 of the PC. In my view, the Appellants' main submissions can be summed up in the following way:

(a) the Representations (or at least the Pre-Sold Representation) were not false; [note: 5]

(b) there was neither dishonesty nor evidence of a conspiracy, as the Boron Scheme and the Representations were essentially created by John Gaunt and James Hodgson without the Appellants' knowledge; [note: 6]

(c) the Representations were either not relied on by the Investors or negated by certain terms in the PRF and TB1; [note: 7]

(d) the element of "delivery of property" was not satisfied in two cases because those two Investors delivered property in another person's name; [note: 8] and

(e) certain pieces of evidence should either have been disregarded or given more weight.

17 The Prosecution disputes most of the Appellants' core factual assertions. It submits that:

(a) the DJ correctly found the Boron Scheme to be a money circulation scam and that the Appellants were responsible for the false Representations by conceptualising and setting up the Boron Scheme and training the sales agents; [note: 9]

(b) there was ample evidence from which a conspiracy could be inferred; [note: 10]

(c) the PRF and TB1 could not negate the Representations on which the Investors relied; [note: 11] and

(d) the contested evidence should not be disregarded, but even if it were, the convictions would still stand. [note: 12]

My decision

18 I will now turn to the arguments. I will address each element of the charges before addressing the issue of evidence.

Deception: whether the Representations were true

19 The first issue goes to the element of deception.

20 On appeal, the Appellants only challenge the DJ's finding that the Pre-Sold Representation was false where the UK is concerned (GD at [449]–[450]). They argue that marketing agreements with two entities (Andrew Hind and Fuel Economy) were in themselves contracts for the purchase of US$2m and US$7.375m of Boron products from PG Dubai. [note: 13] They also rely on an e-mail from ALT which shows that US$225,000 of Boron Products were sent by ALT to Vawtech Ltd ("Vawtech") in August 2008 and distributed by Vawtech to UK customers. [note: 14]

21 These arguments get the Appellants nowhere. To begin with, the defence conceded below that the Pre-Sold Representation was false. [note: 15] Next, Goldring corrected ALT—in that same e-mail chain he relies on—to say that those Boron Products were never sold in the UK but were instead moved to Albania and then Singapore (where no substantial sales took place). [note: 16] Third, those

Boron Products were purchased in August 2008. I cannot see how they were funded by the Boron Scheme, which was launched only three months later in November 2008. In fact, this purchase predated even the acquisition of Vawtech by PPPL, which was only completed in September 2008. Fourth, the US$225,000 of Boron Products allegedly sold cannot account for the Boron Scheme investments sold to investors, which ran into the millions of dollars. Finally, the marketing agreements only obligate Andrew Hind and Fuel Economy to purchase a specified amount of Boron Products each within a 12-month period. [note: 17] However, a promise to purchase a minimum amount from a menu of products over a period is not a purchase of a specific amount of specific items at a specific time. There was not a single invoice evidencing actual sales in the UK.

22 I have no hesitation in saying that the Representations were false when they were made to the Investors.

Dishonesty

23 The next issue, which goes to dishonesty, forms the bulk of the factual disputes.

24 The DJ held that the Appellants evinced a dishonest intent. In particular, he found the Boron Scheme to be a sham to the extent that both Representations were false (GD at [526]). It was conceived by Nordmann and set up and operationalised by Goldring (GD at [528] and [648]–[653]). Both Appellants, knowing that the Representations were false, conveyed them to the public and authorised staff to do the same, while withholding material information from them (GD at [528]–[542]).

25 The Appellants argue that the DJ was wrong in finding that the Appellants were dishonest. The Boron Scheme, they argue, was not a scam or a money circulation scheme but merely a business plan that failed. In fact, it was conceptualised by John Gaunt (and not Nordmann or Goldring). The Appellants neither knew of the Representations nor conveyed them during staff trainings or meetings. They reiterate that the Boron Brochure, which contained the Representations, was not created by them but by Cedric De Souza on the instructions of James Hodgson.

26 In my view, the DJ rightly found that the Appellants were dishonest. Dishonesty merely requires that the accused made the Representations or authorised, caused or allowed an agent to do the same (*Rahj Kamal bin Abdullah v Public Prosecutor* [1997] 3 SLR(R) 227 ("*Rahj Kamal*") at [26]–[28] *per* Yong Pung How CJ). It need not be proved by positive evidence but may be inferred from the surrounding circumstances and the accused's subsequent conduct (at [30]). Some factors include (at [32]–[33]):

(a) not having any viable or income-generating business;

(b) establishing shell companies;

(c) knowing that the representations were false; and

(d) concealing material information, including:

(i) what the business activities (if any) were;

(ii) what the accused did with the money; and

(iii) in an alleged money circulation scheme, the fact that prior investors would be paid

using money collected from subsequent investors.

27 An abundance of evidence led me to the inexorable conclusion that the Appellants had been dishonest by authorising the making of the Representations to Investors, knowing that they were false. I will discuss the five main strands of evidence that I considered.

The Boron Scheme was a money circulation scam

28 A preliminary strand of evidence is that the Boron Scheme (with its two false Representations) was almost entirely a money circulation scam. Prior investors were paid using monies collected from later investors. The Boron Scheme collected at least US$21,293,883 from investors worldwide and it paid returns of at least US$1,344,251. [note: 18] Conversely, the sales of Boron Products (which the Boron Scheme was supposed to fund and from which the investors' returns were to be derived) was at most US$43,461.51. [note: 19] Clearly, investors were paid not just out of profits from Boron Product sales but from the invested monies. Geraldine also admitted the same in her statement. [note: 20] This was, according to the Prosecution, the very crux of a money circulation scheme. [note: 21]

29 I cannot accept the Appellants' claims that the Boron Scheme was not a money circulation scam, but a working capital financing scheme to simultaneously fund the sales of Boron Products to end-users and to reward investors who had helped to build the company. [note: 22] First, there was little need to fund the Boron Products using the Boron Scheme. The Boron Products were almost self-financing since PG Dubai required a 50% advance payment from end-users and delivered the goods only upon full payment. [note: 23] As it turned out, the investors' monies were used, among other things, to invest in land in the Philippines. Second, and in any event, the promised returns on the Boron Scheme are absurd. The Boron Scheme effectively promises investors a return of at least 25% per annum. If it was meant to be a working capital financing scheme, it implies that banks would charge more than 25% per annum in interest to make the Boron Scheme more worthwhile than a bank loan. If the Appellants were honest businessmen, they would have compared the Boron Scheme with such an obvious alternative, weighed the cost and chosen the cheaper option. Bank loans are never near 25% interest per annum and it would be contrary to common sense to regard the Boron Scheme as a *bona fide* alternative financing instrument. The Boron Scripts (which Nordmann prepared) [note: 24] in fact stated that the Boron Scheme allowed PPPL to eliminate bank lending during credit crunch. [note: 25] I cannot believe that the Appellants ruled out or never contemplated a bank loan as they suggested during oral arguments on appeal. The absurdity of the promised return is compounded by the fact that returns to investors do not depend on whether the sale of Boron Products to end-users materialises. [note: 26] Finally, the Appellants' story of wanting to reward investors who helped to build the company holds no water because many Boron Scheme investors were first-time customers of PPPL and there was also no plausible commercial justification to reward investors to this extent. PPPL simply had no business creating a scheme purporting to finance its purchase of Boron Products in the way it did.

The Appellants devised, operationalised and furthered the Boron Scheme

30 The next strand of evidence relates to the fact that both Appellants were instrumental in devising, operationalising and furthering the Boron Scheme.

31 Nordmann admitted in his statement that the idea for the Boron Scheme emerged from a discussion among the directors, including himself. He said that PPPL should exploit the potentially

lucrative sales of Boron Products to raise money. [note: 27] Even if the general idea to finance the Boron Products originated from John Gaunt and James Hodgson, Nordmann must have countenanced and built on it. His testimony is worth reproducing here: [note: 28]

> In terms of the business rationale, when you've got a profit margin or a mark up of 300 per cent, there's an enormous amount of scope to do things … if you are buying for $30 and selling for $100, you are making $70. If you gave away $12.50 [*ie*, 12.5% of $100] out of that, you are still making a very, very healthy profit.
>
> … being the IT guy and more the mathematician, I did say, "Well, if you … are telling me that people will be buying monthly", … just to try to illustrate the concept -- if I'm a client and I give you $1,000, you go and buy some Boron, but you will buy $3,000 worth of Boron with that. If that only takes you three months to go through the cycle, then I can use the $3,000 and buy $9,000 worth of product.
>
> If that takes me three months, now I'm at the end of my six months. So I've actually generated $9,000 of revenue from a $1,000 investment. *So there's what I called a leverage to it, and that's where my interest was*. And I said, "Well, if you can get the logistics side so efficient that from the time of order to the time of payment, then you could leverage -- in this case I've shown a leverage of double." But in theory you could leverage every month, *so $1,000* would become $3,000 after a month, would become $9,000, would become $27,000 would become $81,000, *would become $243,000*.
>
> … *So when … Andrew Hind is talking about 300 million possible for the Post Office*, if you get the leverage right and the efficiency on the logistics, which was from an operational point, *where my antenna springs up*, then … [it] could be financed by a tenth of that, for example.
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> [emphasis added]

In my opinion, this was not just the general, innocuous observation that Nordmann says it was. It became the very premise of the Boron Scheme. [note: 29] It is also telling of how Nordmann built a culture of exaggeration based on sales projections from, for example, Andrew Hind which (as discussed above at [21]) were unjustified and never materialised. In addition, Nordmann prepared the Boron Slides and approved the contents in the Boron Brochure. Although it was James Hodgson that instructed Cedric de Souza to create the Boron Brochure, the ultimate approval must have come from Nordmann. As James Hodgson did not attend the meeting where Nordmann introduced the Boron Scheme to Cedric de Souza, he must in all likelihood have obtained the text from Nordmann later on. [note: 30] Both Goldring and Geraldine also confirmed in their statements that Nordmann would give the final approval for marketing materials after James Hodgson had reviewed them. [note: 31]

32 As for Goldring, he was instrumental in laying down the infrastructure for the Boron Scheme. First, he was responsible for setting up the Profitable Group companies, including PG Dubai. [note: 32] Second, he signed the distributorship agreement with ALT on PG Dubai's behalf. [note: 33] Third, he devised the contractual documents for the Boron Scheme units by adapting forms for land investments to the Boron Scheme. [note: 34] Fourth, he was responsible for all corporate governance, human resource, company secretarial and legal matters for the Profitable Group companies. [note: 35] In particular, he coordinated all board meetings, reviewed board papers, minutes and draft audits. Both Appellants also attended and contributed to the meetings at which the setting-up, running and progress of the Boron Scheme and Boron Product sales were discussed. [note: 36]

33 I cannot believe the Appellants' contrary claim that the Boron Scheme was created by John Gaunt. First, the evidence showed that John Gaunt was involved, if at all, in the sale of Boron Products and not Boron Scheme investments. [note: 37] The minutes of the board meeting on 19 December 2008 showed that John Gaunt's responsibilities included Vawtech (*ie*, the sale of Boron Products in the UK) but not the Boron Scheme. Even Vawtech was the joint responsibility of John Gaunt and Goldring. [note: 38] Second, Nordmann himself said that John Gaunt did not monitor the sales of the Boron Scheme investments nor the sales agents' performance. [note: 39] In fact, sales agents for both the Boron Scheme and Boron Products had few dealings with John Gaunt but a number of them reported directly to either or both of the Appellants. [note: 40] Third, the Appellants rely on an e-mail written by John Gaunt to ALT in mid-2009 suggesting that the Boron Scheme was his responsibility. John Gaunt told ALT to direct queries from Boron Scheme investors back to him but the truth is that this e-mail was drafted in consultation with and vetted by Goldring. [note: 41] Finally, if John Gaunt and James Hodgson fabricated the Representations, the Appellants would have been unpleasantly surprised in May 2009 when James Hodgson left or, at the latest, in July 2009 when John Gaunt was removed and when the Appellants say they took over. Instead, they neither got rid of the Representations nor contacted customers to explain the situation. It was business as usual for the Boron Scheme. All Nordmann did was to ask Cedric de Souza to change the maturity period (but not the Representations) in the third Boron Brochure dated September 2009. [note: 42] It is hard to imagine how John Gaunt, who was invited by PPPL to join as CEO and who only stayed for 10 months, could initiate a fraud that went undetected by the Appellants and that outlived his stay by many months.

34 After the Boron Scheme came into being, both Appellants furthered it aggressively. First, Nordmann introduced the Boron Scheme and the Representations to several staff members in Singapore, Manila and Hong Kong (with Goldring attending in Singapore and Manila). He trained sales staff to convey the Representations to investors and trained sales managers to train the sales staff likewise. [note: 43] The Appellants implore me to view the footage of the training session, which took place in September 2008. They say that this training predated the Boron Scheme (and, therefore, the Boron Brochure and Boron Slides) and the Representations were never conveyed to the sales staff. [note: 44] However, these claims are red herrings. Clearly, there were other meetings or training sessions, besides the one that was filmed, at which the Representations were conveyed and explained. [note: 45] It was not put to the sales staff that they had colluded to frame the Appellants with false testimony or that there was never a meeting at which those Representations were made. Second, Nordmann motivated agents to sell Boron Scheme units to investors by sending e-mails with false inventory figures to create an impression of fast-dwindling stocks and to foster a sense of urgency. [note: 46] Third, the Representations were also published, following an interview with Nordmann, in at least two Hong Kong periodicals, "The Standard" (dated 13 February 2009) and "Mediazone". [note: 47] Again, Nordmann says that the interview footage would show that he never made the Representations. [note: 48] However, this is a feeble excuse. The Representations, like the many quotes which appeared in those articles but not the interview footage, [note: 49] must have come from him even though they were not filmed and broadcasted.

35 All these lead me to conclude that the Appellants were deeply involved in the Boron Scheme, whether from its inception or subsequently. They were also fully aware that the Representations were false and yet intended them to be conveyed to potential investors.

The Appellants used PG Dubai as a shell company

36 The third strand of evidence relates to how PG Dubai was used as a shell company.

37 First, PG Dubai was used as a liability collection point for the Boron Scheme. While investors contracted with PG Dubai, they delivered monies to the other Profitable Group entities like PPPL, which never forwarded those monies to PG Dubai. [note: 50] Next, PG Dubai was also made to enter sham transactions for PPPL's benefit. For example, PG Dubai signed a one-page marketing agreement with PPPL that was devoid of major contractual terms like commissions, sales targets, penalties, timelines, and dispute resolution clauses. [note: 51] Yet, it was later used by PPPL to charge PG Dubai an eye-opening 50% commission for work done in promoting Boron Scheme sales, apparently to soften the impact of a $7.6m impairment to land inventories recognised on PPPL's books. Third, PG Dubai was used to deflect the investors' attention away from PPPL and from the Appellants. PG Dubai had no active business, no staff and no physical address. [note: 52] Nordmann could not explain why investors were only given PG Dubai's PO Box number (which belonged to its corporate secretarial firm) when ALT (who signed the distributorship agreement with PG Dubai) was told that PG Dubai was unmanned and that they should correspond with PPPL directly. [note: 53] This made things exceedingly difficult for investors who were told to contact PG Dubai instead of PPPL when they did not receive their returns.

38 It is true that the mere setting up of PG Dubai was not itself dishonest. However, the uses to which PG Dubai was put revealed the Appellants' ulterior motives.

The Appellants knew that both Representations were false and concealed material information

39 This penultimate strand of evidence, which I think is most crucial, is that the Appellants knew from the outset that Boron Product sales were insufficient and investment monies were used elsewhere. However, they concealed material information from the staff and investors.

40 There was the lack of Boron Product sales. The Appellants knew that there were very few sales staff selling Boron Products. In Singapore, there were only two—Mohammed Maideen ("Maideen") and Hussam Adeni. The Appellants were aware that the latter joined only in January 2009, more than a month after the Boron Scheme was launched. [note: 54] As for the overseas territories, Nordmann could only specifically name six sales agents but many of them, it seemed, were not employees of Profitable Group and worked on a commission basis instead. [note: 55] At any rate, the paltry sales results simply do not justify Nordmann's claim that there were 25–30 staff worldwide selling Boron Products for the Profitable Group. [note: 56] Next, when the Boron Scheme was launched, there was only Maideen in charge of selling Boron Products in Singapore. He updated the Appellants frequently on the lack of Boron Product sales and the need to order samples for potential users. When Maideen told Nordmann it was not time to launch the Boron Scheme because they had nothing to show clients, Nordmann was upset with him and told him to do his job. Even as late as March 2009 (*ie*, four months into the Boron Scheme), no Boron Products had been sold. [note: 57] Third, in the board meeting on 19 December 2008, the Appellants decided to cut funding to Vawtech despite knowing that the Boron Scheme had been launched and Boron Products needed to be sold. [note: 58] Fourth, Goldring would have known, from being privy to the many e-mail exchanges with ALT, that PG Dubai had not purchased the minimum amount of Boron Products required under the ALT Distribution Agreement. [note: 59] This was why ALT eventually terminated the agreement. Finally, both Appellants effectively admitted in their statements that the Pre-Sold Representation was false. Goldring could only say that John Gaunt had "forecast" sales of US$20m between September 2008 and September 2009 and that the financial crisis caused a lack of "anticipated" sales to happen. [note: 60] Similarly, when Nordmann

was asked about the US$2.5m of Boron Products that PG Dubai had agreed to buy from ALT, all Nordmann referred to were the "potential" sales and "projections" that were far greater. [note: 61]

41 The Appellants must also have known all along that the Boron Scheme, in contrast, was raking in huge amounts of money. First, there were about 50 staff worldwide selling Boron Scheme investments. In addition, Nordmann would have realised it since a number of Boron Scheme sales agents reported to him and he constantly pressured them to meet sales targets, while Goldring authorised many financial transactions involving the Boron Scheme, including payments to investors in the Boron Scheme, payments to Vawtech and ALT for purchases of Boron Products and a loan extended by PPPL to PG Dubai for US$221,791 for PG Dubai to buy Boron Products. [note: 62] Second (as discussed at [33] above), when John Gaunt left, the Appellants displayed no surprise at what was happening with the Boron Scheme. They must have been fully aware that there were no pre-sales and that the investment monies were being diverted elsewhere.

42 Despite knowing that the Representations were false, the Appellants concealed material facts from their sales staff and, by extension, the investors. These include:

(a) concealing the fact that Boron Products were almost self-financing and hardly needed any working capital;

(b) concealing the fact that Profitable Group had not sold any Boron Products to major companies and the companies listed in the Boron Brochure were not clients of PPPL;

(c) concealing the fact that monies invested would not be exclusively used to buy Boron Products;

(d) concealing the fact that the Boron Scheme was generating insufficient revenue to pay existing investors because its obligations far outweighed the profits from the sale of Boron Products;

(e) concealing the fact that prior investors were paid using monies collected from later investors or from revenue outside the Scheme; and

(f) refusing to disclose who the end-users of Boron Products were (and dismissing questions by saying that it was "proprietary information").

43 In this context, I have no hesitation in saying that suppressing what is true is as good as suggesting what is false. In this case, the Representations were outright falsehoods.

Goldring remained silent

44 The final piece of the puzzle is Goldring's silence. The DJ correctly drew an adverse inference against him for remaining silent in the face of the overwhelming evidence pointing to his guilt. I cannot accept his claim that he did not testify because of costs considerations. Goldring never said so when he was called upon to testify [note: 63] and, in any event, I agree with the DJ that Goldring was free to discharge counsel and testify (see GD at [640]–[642]). This he did after the defence closed its case. I also cannot accept Goldring's claim that he did not testify because he thought that the evidence was "so overwhelmingly in favour of the Defence that [he] felt there was nothing of consequence [he] could add". [note: 64] I cannot fathom how Goldring could honestly believe this when the DJ had just administered the allocution under s 230(1)(*m*) of the CPC and when Nordmann

later elected to give evidence in his defence.

45 Considering all the evidence above, there was ample evidence for the DJ to be satisfied beyond a reasonable doubt that the Appellants made the Representations dishonestly.

Conspiracy

46 The third issue goes towards whether there was a conspiracy to cheat.

47 The Appellants assert that there was no evidence (or, at least, no direct evidence) to show a conspiracy between the Appellants to cheat. I agree with the Prosecution that the Appellants' argument is misconceived. A conspiracy is, at its heart, an agreement between persons to engage in a common criminal object. It need not be proved by direct evidence; in fact, a conspiracy is often proved by the cumulative circumstantial evidence because conspirators mostly agree in private and direct evidence is rarely available (*Public Prosecutor v Yeo Choon Poh* [1993] 3 SLR(R) 302 at [19]).

48 As the DJ has found (GD at [545]–[548]) and as I have discussed (at [31]–[34] and [44] above), the Appellants were the only directors who approved the Boron Scheme and who were directly responsible for setting it up. Further, as mentioned above, Goldring chose to remain silent at the trial. The DJ was therefore justified in finding that both Appellants had conspired to cheat the Investors.

Inducement: whether the Representations were negated by contractual terms

49 The next issue goes to inducement.

50 The DJ, transposing the comments of Belinda Ang Saw Ean J in *Su Ah Tee and others v Allister Lim and Thrumurgan (sued as a firm) and another (William Cheng and others, third parties)* [2014] SGHC 159 ("*Su Ah Tee*") to the criminal context, held that the terms of the contract did not negate false representations (GD at [669]–[677]).

51 The Appellants argue, based on both Clause 4 of the PRF Terms and Conditions and Clause 10.1 of the TB1, that the Investors did not rely on any representations by the sales agents and/or in the Boron Brochure in entering the contracts. Clause 4 of the PRF Terms and Conditions reads:

> 4. By signing the Product Request Form, the Buyer(s) confirm that they have read and accept the conditions detailed herein, and that the purchase of the product(s) by the Buyer is based solely upon the Buyer's own discretion.

Clause 10.1 of the TB1 reads:

> 10.1 The transferee hereby acknowledges that no statement representation warranty or covenant has been made to it which has induced it to enter into this Transfer by the Transferor or any agent employee or solicitor of the Transferor (which oral or otherwise) concerning the Property.

52 In particular, the Appellants assert that each Investor completed a PRF and TB1 *before* delivering property and argue that each Investor accepted the TB1 as binding on them and/or did not rely on the Representations. [note: 65] They argue that the Investors acknowledged *before* delivering property that their purchase was "based solely on [their] own discretion" and that they did not rely on the Representations and, accordingly, they could not claim otherwise now. [note: 66] They also

argue they were not trying to "contract out" of cheating in the first place, since it is not a case where Investors said that they relied on the Representations and the Appellants then purported to negate them via the PRF and TB1. [note: 67]

53 The Prosecution submits, first, that the Investors handed money to the Appellants (or the sales agents) *before* they filled out any forms or entered any contracts. [note: 68] The Investors also either did not read the clauses or placed little weight on them. In other words, they delivered property because they were deceived through the Representations. [note: 69] Second, the PRF is not a contract to begin with. [note: 70] Third, as a matter of public policy, a person cannot contract to exclude liability for his own fraud unless the language is clear. [note: 71]

54 I find that the Appellants' factual assertions have little basis. The DJ found, on the basis of ample evidence, that the Investors relied on the two Representations in entering the Boron Scheme. The parts of the Investors' testimonies suggesting otherwise (and on which the Appellants relied) must be seen in their proper context. The Investors did accept that they did not rely on *advice* that the Boron Scheme was a good, safe or suitable investment, or that they should invest a certain amount in it. However, to the Investors, the Representations provided fundamental information about the Boron Scheme. [note: 72] The point is that the Investors did not rely on any representations where value judgments were concerned. In fact, this view is most consonant with the quality assurance questions posed to Investors, which appear on the flipside of the PRF:

> 4. I confirm that I have not received any investment *advice* from The Profitable Group either directly or implied.
>
> 5. I understand that The Profitable Group do not offer any legal, financial or other *advice*, either regarding the *nature, potential value or suitability* of any particular investment, security or investment strategy, or otherwise.
>
> [emphasis added]

The Appellants' claim that each Investor completed a PRF before delivering property is also false. At least two Investors (Lim Shi An and Koh Leong Tuan Alan) delivered money before filling out the PRF. [note: 73] Further, the record also clearly shows, for all the Investors except one, that property was delivered before the TB1 was signed and that the TB1 was backdated (usually to the date that property was delivered). [note: 74] As for the last Investor, John Nicholas Williams, the evidence also suggested albeit more equivocally that the TB1 was backdated. [note: 75] However, as I will explain, my findings on when the PRF or TB1 was signed have no bearing on my decision.

55 Similarly, the Prosecution's argument that the Investors had delivered property before signing the contract does not fully address the issue. Ultimately, a contract is a relationship between two parties. The signing of the TB1 merely evidences a contractual relationship, in the same way that the delivery of property by Investors to PPPL may be pursuant to the TB1 and may show that a contractual relationship subsists. The Investors must have handed property to PPPL because they thought they were doing so pursuant to the TB1. The TB1 was almost always backdated to the date when money was delivered. Arguably, a contract subsisted from the date on the TB1. The Prosecution's argument that the Investors placed little or no weight on the clauses is also inconclusive because courts generally uphold a contract even if a party did not read all its terms. However, these are not issues that I need to resolve. The crux of the matter is this: the two Representations here are false and they are neither innocent nor negligent. They were fraudulent and

dishonest within the meaning of s 24 of the PC and in the context of cheating under s 420 of the PC (as discussed above at [23]–[45]). Bearing these in mind, can the TB1 now operate to relieve the Appellants of liability for their fraud?

56 In my opinion, the answer is clearly "no".

57 Both Clause 4 of the PRF and Clause 10.1 of the TB1, on their proper construction, cannot be read to exclude the Appellants' fraud. Specifically, they cannot be read to say that the Investors did not rely on any fraudulent representations (which, in this case, refer to the Representations) in investing in the Boron Scheme. On the contrary, the clauses contemplate honest dealing between parties.

58 In the civil context, a similar example arose in *S Pearson & Son, Limited v Lord Mayor, &c, of Dublin* [1907] AC 351 ("*Pearson*"). There, the plaintiff contractor sued in an action of deceit for damages for fraudulent representations made by the defendant's agent as to the nature of the works to be done. The contract provided that the contractor should satisfy himself as to the dimensions, levels and nature of all existing works and other things connected with the contract works, that the defendant did not hold itself responsible for the accuracy of the information regarding existing works and that no charges for extra work would be allowed because of inaccurate information. It was held that the contract, on its true construction, contemplated honesty on both sides and protected only against honest mistakes (at 354 *per* Lord Loreburn LC, at 360 *per* Lord Ashbourne, at 362 *per* Lord James of Hereford, at 365 *per* Lord Atkinson (Lords Macnaghten, Robertson and Collins agreeing)).

59 Applying this to the present case, it must be the case that Clause 4 of the PRF and Clause 10.1 of the TB1 protect the Appellants only from honest mistakes and not from fraud. Nothing in the language of these clauses suggests that they were intended to protect the Appellants from fraud. This interpretation is consistent with the tenor of the Appellants' arguments that they have been running an honest business and using the PRF and TB1 (in the context of land investments) before the Boron Scheme was launched. The terms in the PRF and TB1 can perfectly be interpreted to say that Investors were not induced to invest in the Boron Scheme on the basis, for example, that it was a "good" investment or a "low-risk" investment. Investors can agree to the same. However, they would have invested thinking that they were investing into the Boron Scheme as presented to them, that is, that the Boron Scheme had two inherent and fundamental qualities embodied in the Pre-Sold Representation and the Exclusive Use Representation. Let us consider two analogies. Assume that A offered B an investment with a five-year maturity and a 5% per annum return. A can, in the same breath, tell B that the decision to invest is solely B's to make. However, this cannot mean that A may issue B with an instrument in perpetuity with a floating return. Let us next assume that C agreed to sell D a car, with D agreeing that he was not induced by what C says. It cannot be that C may deliver a motorcycle to D on that basis. If it were otherwise, the monies invested in the Boron Scheme could, for example, be used to invest in land in the Philippines, despite whatever was said to the Investors.

60 Even if Clause 4 of the PRF and Clause 10.1 of the TB1 could be interpreted to exclude liability for the fraudulent Representations, they must be held to be void in law both under statute and for being contrary to public policy.

61 In the civil context, there is ample authority to say that one cannot contract out of one's own fraud. This was stated, for example, by Woo Bih Li J in *Mentormophosis Pty Ltd and others v Phua Raymond and another* [2010] SGHC 188 at [21], citing *Pearson*. In *Pearson* itself, an eight-member House of Lords unanimously held that a clause which purported to exclude liability for the fraud of the contracting party was void (at 353–354 *per* Lord Loreburn LC, at 356 *per* Earl of Halsbury, at 360 *per*

Lord Ashbourne, at 362 *per* Lord James, at 364–365 *per* Lord Atkinson (Lords Macnaghten, Robertson and Collins agreeing)). In *Jiang Ou v EFG Bank AG* [2011] 4 SLR 246, Steven Chong J also observed at [108] (in the context of conclusive evidence clauses relating to cheques) that a clause excluding liability for the fraud of the bank's employees would both run counter to public policy considerations and run afoul of the reasonableness test under s 11 of the Unfair Contract Terms Act (Cap 396, 1994 Rev Ed) ("UCTA"). Often, a clause purporting to exclude liability for fraud is part of the machinery that advances and disguises that fraud. To uphold such a clause would be inimical to notions of justice. In my view, Clause 4 of the PRF and Clause 10.1 of the TB1, to the extent it purports to exclude the Appellants' fraud, must be void for being against public policy and also for failing the test of reasonableness to which it is subject under s 11 of UCTA. I cannot see how such a term is fair and reasonable with regard to the circumstances and how it could have reasonably been in any Investor's contemplation. I doubt that any rational investor, let alone the generally well-educated Investors here, would have agreed to a clause protecting against the company's fraud.

62 If such clauses are void in the civil context, then they must be void in the criminal context. In the civil context, a fraudulent misrepresentation is one which was made knowingly, without belief in its truth, or recklessly without caring whether it be true or false (*Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [13], citing *Derry v Peek* (1889) 14 App Cas 337). This must encompass "dishonesty" within the meaning of cheating in criminal law, which is narrower. Section 24 of the PC provides that dishonesty entails the intention to cause wrongful gain to one or wrongful loss to another.

63 In my view, a distinction has to be made with the line of cases relied upon by both the Prosecution and the DJ. They relied on *Su Ah Tee*, which at [201] cited the speech of Lord Bingham of Cornhill in *HIH Casualty and General Insurance Ltd & Ors v Chase Manhattan Bank & Ors* [2003] 1 CLC 358 ("*HIH Casualty*") at [16]–[17]. Those cases, however, dealt with the case of fraud by an agent. Although a principal can exclude liability for his *agent's* fraud with clear language, it is clearly against public policy for a person to contractually exclude liability for his own fraud. This distinction accords with both law and common sense. A principal knows fully and, more importantly, is in full control of what he is doing. The same cannot be said where his agent is concerned. The present case involves the fraud of the principal (*ie*, the Appellants) and not merely the agents (*ie*, the sales agents) because whatever the sales agents have said to the Investors corresponded to what the Appellants instructed them.

64 It also does not help the Appellants to say that Clause 4 of the PRF and Clause 10.1 of the TB1 are non-reliance clauses and not liability exclusion clauses and therefore no liability arises in the first place. Whether these clauses purport to exclude liability is a question of substance and not of form (see *Deutsche Bank AG v Chang Tse Wen and another appeal* [2013] 4 SLR 886 ("*Deutsche Bank*") at [63] *per* Sundaresh Menon CJ). The difference was explained in *IFE Fund SA v Goldman Sachs International* [2007] 1 Lloyd's Rep 264 at [68]–[69] by Toulson J as follows:

> 68 The question is one of substance and not form. If a seller of a car said to a buyer "I have serviced the car since it was new, it has had only one owner and the clock reading is accurate", those statements would be representations, and they would still have that character even if the seller added the words "but those statements are not representations on which you can rely". … [A] party cannot by a carefully chosen form of wording circumvent the statutory controls on exclusion of liability for a representation which has on proper analysis been made.
>
> 69 If, however, the seller of the car said "The clock reading is 20,000 miles, but I have no knowledge whether the reading is true or false", the position would be different, because the qualifying words could not fairly be regarded as an attempt to exclude liability for a false

representation arising from the first half of the sentence.

The Appellants, through the Boron Brochures and sales agents, made the Representations about the Boron Scheme which were matters well within their knowledge or control. In my view, Clause 4 of the PRF and Clause 10.1 of the TB1 fall squarely within the former category of clauses (as described in the case cited above) and are subject to the restrictions imposed by the law on liability exclusion clauses. In the context of liability exclusion clauses within Part I of the UCTA, s 13(1) of the UCTA also prevents a party from excluding liability via a contractual term or non-contractual notice which excludes or restricts the relevant obligation or duty except insofar as it is reasonable. This seems to preclude any material distinction being drawn between clauses which exclude liability and those which restrict the scope of the duty or the obligation (*Deutsche Bank* at [63]). The same principles could be applied to non-reliance clauses like Clause 4 of the PRF and Clause 10.1 of the TB1.

65 I agree with the Prosecution that the Appellants' reliance on Clause 4 of the PRF is misplaced because it is not part of a contract in the first place. It is merely a request form or, in contractual terms, an invitation to treat. This has always been Nordmann's position [note: 76] and it is not open to him now to argue that Clause 4 is contractually binding on the Investors.

66 In the light of the foregoing discussion, I am of the view that Clause 4 of the PRF and Clause 10.1 of the TB1 cannot afford the Appellants any protection from criminal or civil liability. The other implication, which bears repeating, is that the issue of when the contract is signed becomes irrelevant in a case of cheating once it is shown that the Representations were dishonestly made.

Delivery of property: whether the seven-day cooling-off period affects when the property was delivered

67 This issue is ancillary to the issue of inducement, as there was a dispute as to when property was delivered.

68 The Appellants argue that property is only deemed delivered after the seventh day from the date of contract, since an Investor is entitled to a full refund for seven days (*ie*, the cooling-off period) from the date of contract. [note: 77]

69 This issue is virtually academic given that none of the Investors received a refund. Christopher Au, whose initial request for a refund was agreed to, eventually proceeded with the investment. In any event, this argument is misplaced. First, I agree with the Prosecution that cheating under s 420 of the PC is not an offence against ownership or possession of property. It is an offence concerning the custody of property (*ie*, delivery). The element of delivery of property is completed once physical custody passes from one to another; transfer of title is unnecessary. In fact, the word which the Appellants use—"refund"—presupposes that delivery has taken place. Second, the cooling-off period is not a contractual right. It is found in the PRF (but not the TB1), which the Appellants say is not a contractual document. The fact that the Appellants have refunded some investors does not change the position.

Delivery of property: whether the property must have been delivered in one's own name

70 This issue relates specifically to the two investors who did not invest in their own names. Christopher Au invested with his own money but part of the investment in the Boron Scheme was done in his wife's name. Peter Aloysius Lourdes invested in the Boron Scheme in his wife's name using a cheque drawn from his wife's account, though the decision to invest was made jointly by husband and wife.

71 The Appellants argue that the DJ was wrong in saying that the name on the contract did not matter. They submit that they could not be convicted of conspiring to cheat someone who did not invest in the Boron Scheme in his own name.

72 The DJ was correct in saying that in the case of cheating, it is not necessary that the property must have been delivered in the Investor's own name. First, the language of s 415 and s 420 of the PC is clear. Cheating is committed when the offender dishonestly induces the person deceived "to deliver *any* property to *any* person". The offence is framed in wide terms and there is no requirement that the property be delivered in one's own name. Second, the case of *Public Prosecutor v Singh Kalpanath* [1995] 3 SLR(R) 158 is instructive. There, the victim of a cheating offence, a shareholder-director of a company, delivered money to the accused by way of cheques drawn on the company account. Yong CJ held that:

> 48 … I was prepared to accept that the money belonged to [the company]. Nevertheless, on a plain reading of the statutory provisions, there is no requirement that the person cheated must own the property involved: "any property" suffices. …
>
> …
>
> 50 It is misconceived to contend that the scope of the cheating or deception offence within our provisions is restricted by a condition that the ownership of the property must vest in the person so cheated or deceived. Therefore, it was immaterial that the money belonged to [the company]. In the premises, I found that full particulars had already been set out in the two charges which were not in any way defective.

It is clear from this passage that, where a cheating charge is concerned, all that matters is who delivered the property referred to in that charge. Third, this interpretation accords with common sense. Justice would be perverted if the Appellants can claim that there was no cheating simply because the property was delivered in another person's name. In fact, if these two charges had referred not to Christopher Au and Peter Aloysius Lourdes but to their wives, the charges would have been defective since their wives did not deliver the property.

73 The Appellants' argument on this point is unmeritorious and must therefore fail.

Whether certain evidence should be disregarded/considered

74 The Appellants argue that the DJ ignored several pieces of evidence which the Appellants say support their innocence, including the evidence of Nicholas Naresh (a PPPL employee and one of the Boron Scheme investors). [note: 78] They also say that the DJ should have disregarded the following pieces of evidence:

(a) the report of the Prosecution Expert, Mr Andre Toh, should have been rejected as its scope was wrong, as that scope was not followed and as many transactions were misunderstood or omitted; [note: 79]

(b) the working papers of the audit on PPPL should have been disregarded as they were (among other problems) in draft form and tendered through one Mr Kong Kian Siong, who only worked on the audit near its completion and was not personally involved in its authorship; [note: 80] and

(c) the evidence of Prabakumar (the finance manager handling the accounts of PPPL and Profitable Plots Sdn Bhd), Michael Phelps (ALT's President) and John Gaunt should have been excluded as they were hearsay. [note: 81]

75 These arguments do not bring the Appellants very far. I think that Nicholas Naresh's evidence was correctly rejected. I am also satisfied that even if I disregarded the contested evidence, the remaining evidence would still have shown the guilt of the Appellants beyond a reasonable doubt and the conviction would therefore still stand.

76 I turn first to the evidence of Mr Andre Toh and Mr Kong Kian Siong. Their evidence essentially comprised opinions based on PPPL's business records, which were entered into evidence without serious challenge by the Appellants. Mr Andre Toh's evidence was relied upon by the DJ to a small degree in convicting the Appellants on their charges. In general, it merely served to confirm the DJ's analysis (GD at [421] and [427]–[430]). In establishing the offence, the DJ hardly relied on Mr Kong Kian Siong's evidence. Second, their evidence related to background facts. In particular, Mr Andre Toh's expert report answered the issue of whether the Boron Scheme could honour its obligations when they fell due, while Mr Kong Kian Siong's evidence was focused on the audit process in general and land investments. As the Prosecution has pointed out, their evidence was not immediately relevant to whether the offence was committed, since the elements of the offence could be (and have been) satisfied without relying on their evidence.

77 I turn next to the evidence of Michael Phelps, Prabakumar and John Gaunt. Their evidence merely corroborated that of other witnesses or documentary evidence already admitted at trial. In convicting the Appellants, the DJ made little reference to the evidence of these three witnesses. Michael Phelps's statement went towards explaining the agreement to buy Boron Products from ALT and why the exclusive distributorship agreement was terminated. These facts were undisputed and the underlying documents such as contracts and e-mails were admitted into evidence unchallenged (GD at [602]). Prabakumar's evidence also concerned undisputed matters (GD at [595]). He merely confirmed Mr Kong Kian Siong's evidence that he was the PPPL employee who dealt with the auditors and confirmed the evidence of other PPPL employees that PG Dubai had no physical address, staff or inventory. As for John Gaunt's evidence, the DJ was fully alive to the possibility that, if he were guilty of cheating, he had every incentive to blame Nordmann and Goldring instead (GD at [610]). The DJ was careful to accept only portions of his statement that corroborated the other evidence (GD at [611]–[616]). Without their evidence, I would still have been satisfied as to the Appellants' guilt.

78 Finally, I turn to Nicholas Naresh's evidence. I am also of the opinion that the DJ correctly rejected Nicholas Naresh's evidence. The DJ rightly found at [632] of the GD that Nicholas Naresh had reasons to testify in the Appellants' favour out of loyalty. He was among Nordmann's first recruits, promoted to sales director within six months and appointed to run the Malaysian office. Insofar as the DJ's conclusion was based on the way Nicholas Naresh responded on the stand, it was certainly neither plainly wrong nor against the weight of the evidence and there is no basis for me to disagree. Moreover, it is hard to believe that he, as an investor, could unreservedly assert that the Pre-Sold Representation did not prevent Boron Scheme units from being sold *even if* the corresponding Boron Products were not sold. [note: 82] It was conceded by Nordmann and in the Boron Scripts that Boron Scheme sales would have to stop if Boron Product sales ceased. [note: 83] The Appellants argue that Nicholas Naresh was credible because the Prosecution did not challenge his credit. [note: 84] However, a judge is entitled to find a witness unreliable even if he or she was not formally impeached.

Conclusion on the Appellants' guilt

79 For the foregoing reasons, I am satisfied that the DJ's findings were correct. The Appellants' guilt has been proved beyond a reasonable doubt. I see no ground for me to disagree with the DJ's decision and, accordingly, I uphold the convictions. I will now turn to the cross-appeals against sentence.

The cross-appeals against sentence

80 In sentencing the Appellants, the DJ employed four lines of reasoning. First, there were six aggravating factors (GD at [695]). Second, the Boron Scheme was not entirely a scam and fell between the sentencing markers of *Rahj Kamal* and *Phang Wah and others v Public Prosecutor* [2012] 1 SLR 646 ("*Phang Wah*") (GD at [698]–[701]). Third, the individual sentences were calibrated against the monies cheated from each Investor as reflected in the following table (GD at [694]). Fourth, Nordmann received a higher global sentence as he played a larger role as "chief marketer" of the Boron Scheme (GD at [696]–[697]). The DJ accordingly ordered the sentences for charges 4, 9 and 17 to run consecutively for Goldring, making a total of seven years' imprisonment. The sentences for charges 2, 4, 9 and 17 were ordered to run consecutively for Nordmann, making a total of eight years' imprisonment. The sentences are reflected in this table below:

Charge No	Investor	Amount invested (US$)	Sentence (imprisonment)
1	Durairajan s/o Duraiappan Mariyammal	20,000	6 months
2	Au Chung Wai Christopher	54,000	1 year
3	Chakroborty Arijit	10,000	6 months
4	Koh Leong Tuan Alan	59,000	1 year
5	Leong Pek Kay	15,000	7 months
6	Lim Shi An	26,000	8 months
7	Ng Ee Ling	20,000	8 months
8	Chua Pair Shen	5,000	6 months
9	Yap Lay Hoon Lilian	186,000	3 years
10	Adsit Serena Kim	5,000	6 months
11	Mellisa Octaviani	13,000	6 months
12	Foo Siew Wei	5,000	6 months
13	Lium Ming Toon	90,000	2 years
15	John Nicholas Williams	10,000	6 months
17	Neoh Kok Cheng	191,000	3 years
18	Annamali Meyyappan	7,000	6 months
19	Peter Aloysius Lourdes	6,000	6 months
20	Tan Zheqi	10,000	6 months

81 These sentences have been appealed against by both the Appellants and the Prosecution. In an appeal against sentence, appellate intervention is warranted if the sentence is manifestly excessive or inadequate, wrong in law or against the weight of the evidence (s 394 of the CPC). It was stated by the Court of Appeal in *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [12]–[13] that intervention on the latter two grounds is justified only if the sentencing judge:

(a) erred with respect to the proper factual basis for sentencing;

(b) failed to appreciate the material before him; or

(c) applied a wrong principle in sentencing.

The arguments

82 The Appellants argue that the sentences were manifestly excessive on many grounds. [note: 85] However, some arguments were based on facts which, if true, would have overturned the conviction. [note: 86] To that extent, those points need not be considered in their appeals against sentence. Their remaining arguments, in substance, are that:

(a) the Boron Scheme was not entirely a sham; [note: 87]

(b) that some investors received "restitution" or did not lose money to the Boron Scheme; [note: 88] and

(c) the Appellants did not show a lack of remorse by claiming trial, especially since Geraldine was acquitted after trial. [note: 89]

83 In the cross-appeal, the Prosecution argues that the aggregate sentences should be enhanced to 12–14 years' imprisonment by ordering more sentences to run consecutively. [note: 90] The sentences imposed by the DJ were manifestly inadequate because:

(a) he erred in considering that the investors and losses suffered should be limited to those in the charges proceeded with; [note: 91]

(b) he erred as to the factual matrix, by finding that that the Boron Scheme was not entirely a scam; [note: 92]

(c) he gave insufficient weight to the aggravating factors in general and the lack of mitigating factors; [note: 93] and

(d) he erred in finding that the present case fell between the sentencing markers of *Phang Wah* and *Rahj Kamal*. [note: 94]

My decision

84 These arguments can be crystallised into three main issues, namely, whether I should consider the facts beyond the proceeded charges, whether the Boron Scheme was entirely a scam and whether the sentences were manifestly inadequate or excessive considering the sentencing factors and precedents.

Whether the number of investors and amount of losses beyond the proceeded charges should be considered

85 The Prosecution submits that the DJ was "wrong and *overly mechanistic* in failing to consider the total sum of money collected by PPPL and its affiliated companies as a result of the Boron Scheme". [note: 95] A total of US$21,293,883 was collected worldwide (of which US$9,553,592 was collected locally in cash) and this formed "part of the overall circumstances surrounding the crime committed" and should be considered as part of the aggravating circumstances.

86 I cannot accept this submission. In my view, the DJ was right to have confined the number of investors and amount of losses to the charges at trial for the purpose of sentencing.

87 Section 148(1) of the CPC provides that if the accused is found guilty of an offence, the court may, when passing sentence, take into consideration other outstanding offences that the accused admits to have committed if both the Prosecution and the accused consent. If this course of action is taken, then the consequence is that the accused may not, unless the conviction for the original offence is set aside, be charged or tried (and therefore sentenced) for any offence which the court had taken into consideration (s 148(5) of the CPC). The rationale is twofold—to punish offences as aggravation and to save judicial time on their trial (*Criminal Procedure in Singapore and Malaysia* (Tan Yock Lin and S Chandra Mohan gen eds) (LexisNexis, 2012) at ch XVIII, para 4354, approved in *Lim Hsien Wei v Public Prosecutor* [2014] 3 SLR 15 at [25]–[26] *per* Chao Hick Tin JA).

88 The Appellants here did not consent to have the 68 stood down charges taken into consideration for sentencing. This is their prerogative. The consequence is that those charges remain outstanding and untested. If the Prosecution proceeds with those charges and secures convictions on them, the judge will naturally take the amounts in those charges into consideration when considering sentence. The stood down charges are irrelevant in determining the sentences for the charges that were proceeded with (*Mohamed Shouffee bin Adam v PP* [2014] 2 SLR 998 at [81(g)] *per* Menon CJ; *Chua Tiong Tiong v Public Prosecutor* [2001] 2 SLR(R) 515 ("*Chua Tiong Tiong*") at [29]). If the DJ had considered the amounts alleged to have been cheated in the stood down charges, he would be pre-judging matters which are not agreed to and which have not been tested. More importantly, should the Appellants be convicted on those charges in a subsequent trial, the judge there will have an impossible task in sentencing the Appellants as they may be said to be punished twice for those offences.

89 The Prosecution submits that the DJ was, in any event, wrong in not considering the amount of US$18,790,383 which was collected under the Boron Scheme but which was not the subject of any charges. [note: 96] Of this amount, US$11,740,291 was collected from overseas investors who, according to the Prosecution, should not be ignored simply because they could not file police reports in Singapore. [note: 97]

90 It is equally clear that the amounts invested which are not the subject of any charges cannot be considered in determining the sentence (*Chua Tiong Tiong* at [28]; *Knight Glenn Jeyasingam v Public Prosecutor* [1992] 1 SLR(R) 523 at [13]). There is no evidence that those investors were deceived by the use of the Representations into delivering property to PPPL. In fact, some investors may claim, like Nicholas Naresh mentioned above did, that they did not rely on the Representations at all. [note: 98]

91 The Prosecution also submits that even if I did not consider the total amount invested as an aggravating factor, I should take into account the level of public disquiet and the effect on public

confidence on Singapore's investment industry caused by the Boron Scheme. [note: 99] According to the Prosecution, the Securities Investors Association of Singapore ("SIAS") stepped in to "take up the plight of the investors in the Profitable Plots saga" (David Gerald, "The Profitable Plots Investors' Plight" <http://sias.org.sg//profitable_plot/>) while the Monetary Authority of Singapore proposed to enhance its regulatory framework partially in response to the Boron Scheme. Apparently, David Gerald further stated that "an estimated 1,500 Singaporeans and 4,000 foreigners are believed to have invested their money with Profitable Plots" and that several foreign investors had invested with PPPL "because it was based [in Singapore], and they were confident about Singapore's reputation as a financial hub with strict enforcement of regulators" (Yasmine Yahya, "Don't keep clients in the dark: SIAS" *The Straits Times* (25 May 2011)). [note: 100]

92 In my view, this submission faces two serious problems. First, the Prosecution's assertions were fiercely disputed [note: 101] but have not been formally proved. In fact, the Prosecution now seeks to rely on what David Gerald said, despite having objected to an application below by counsel to issue a subpoena against him (on the basis that any evidence he could give would not be relevant). [note: 102] Further, some of these claims are hearsay upon hearsay. Second, the claims of public disquiet and effect on public confidence in these news articles were premised on the total investment amount. This presumed some criminality or impropriety in the entire investment amount, including the amounts which were not the subject of any charge. The Prosecution relied on two authorities to show that the Court can take public disquiet into account (*Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [25(c)] and *Public Prosecutor v Wang Ziyi Able* [2008] 2 SLR(R) 1082 at [29]). However, neither involved stood down charges which were similar to those which were proceeded with at trial. I therefore do not think it would be fair to sentence the Appellants on the basis that they have caused public disquiet through cheating investors of US$21,293,883, when they have only been convicted of conspiring to cheat a total of US$732,000. It would be fair nevertheless to say that there must have been some disquiet among the Investors in the charges in issue here.

93 Even if the Prosecution were to undertake to withdraw the outstanding charges should they be considered by the court in sentencing, the fact remains that the Appellants have not admitted that they committed those offences. They should therefore not be a factor in the sentencing considerations here.

Whether the Boron Scheme was entirely a scam

94 The Prosecution submits the Boron Scheme was a scam in its entirety as the sales of and efforts to market the Boron Products were mere smokescreens which lent a veneer of authenticity to what was in fact a thorough scam. It also argues that the DJ's comparison with *Phang Wah* was unjustified because the investors here (unlike those in *Phang Wah*) never received any goods or services of value. The Appellants, on the other hand, maintain that the Boron Scheme was not a scam in its entirety.

95 The DJ found that the Boron Scheme was not entirely a scam. The purchases, sales and marketing of the Boron Products, which were said to have lent a veneer of authenticity to the Boron Scheme, could also arguably show that there was some effort to enter the Boron business. However, the paltry sales and the belated and unenthusiastic marketing and technical support efforts for the Boron Products show that any genuine business was but a very small part of the entire scheme.

96 Therefore, I do not think that the DJ was entirely correct in comparing the present case with *Phang Wah*. In *Phang Wah*, the investors were involved in a scheme which offered a lifestyle package which included services, rebates, and points which were exchangeable for cash or products; only one

rebate (a component of the package akin to a commission for recruiting participants and which had been geared to an unsustainable rate of return) was found to be fraudulent (*Public Prosecutor v Phang Wah and others* [2010] SGDC 505 ("*Phang Wah (DC)*") at [255] and [275]–[304]). However, the Investors here were promised pure monetary returns, not lifestyle benefits. The Investors did not receive any payments or any goods or services of value.

Whether the sentences were manifestly inadequate or excessive considering the relevant sentencing factors and precedents

97 The Prosecution argues that there were no mitigating factors and that the DJ gave insufficient weight to the following aggravating factors:

(a) the Boron Scheme was a huge premeditated money circulation scam designed to cheat investors;

(b) the Boron Scheme was deliberately set up in a sophisticated manner to try to avoid civil and criminal liability;

(c) the Boron Scheme claimed many victims and caused sizeable losses;

(d) the Appellants enriched themselves at the victims' expense;

(e) the Appellants failed to make restitution and their post-offence conduct shows a clear lack of remorse; and

(f) the Appellants' conduct at trial showed a blatant lack of remorse.

98 The Prosecution also argues that the DJ was wrong to find that the present case fell between the sentencing markers of *Phang Wah* and *Rahj Kamal*. Instead, the sentences should be in the range of 12–14 years and, in any event, significantly higher than the eight years' imprisonment in *Rahj Kamal* because the present losses of US$732,000 greatly outweighed the loss of $175,000 suffered in that case.

99 The Appellants argue that the sentences were too harsh. I will address their two remaining arguments before turning to the precedents cited by the Prosecution.

Whether the Investors received "restitution"

100 The Appellants argue that certain investors either received "restitution" of or did not "lose" the amounts that they invested, in one of the following ways: that they profited from the Boron Scheme or some investments with PPPL, that they were no longer owed anything by the Boron Scheme as they had converted their Boron Scheme investment to a land investment, or that they had invested in the Boron Scheme in apparent violation of PPPL's policy. Further, they blamed PPPL's failure on blog entries which they claim destroyed public confidence in PPPL and, consequently, PPPL's ability to repay investors.

101 In my view, these claims have no mitigation value. None of the Investors here received any money from their Boron Scheme investments save for Serena Adsit Kim (the Investor in the 10th charge), who received only one payment of interest on her first investment three months after it had fallen due. [note: 103] If the Investors profited from other investments, that cannot erase the fact that they were cheated by the Appellants into investing in the Boron Scheme. It is also hardly

relevant that some Investors converted their Boron Scheme investments to other investments, since they ultimately remain unpaid and the conversions simply notionally shifted the liability from one scheme in PPPL to another. I also cannot accept the claim that investors entered the Boron Scheme in violation of PPPL's policy as the DJ found that Goldring had sanctioned those investments (GD at [510]). I am also unimpressed with the Appellants' complaint that that their downfall or inability to repay investors was hastened by articles talking about the very thing they have been doing.

102 The lack of restitution is an aggravating factor where an offender refuses to make restitution despite having the means and the opportunity to do so (*Gunasegeran s/o Pavadaisamy v Public Prosecutor* [1997] 2 SLR(R) 946 at [67] *per* Yong CJ). During the life of the Boron Scheme, Nordmann and Geraldine collectively received US$760,663 while Goldring received US$332,101 in terms of salaries, commissions and referral fees. [note: 104] Nordmann and Geraldine even had 18 tonnes of personal effects which they shipped from their residence in Malaysia to France in early 2011, while investigations were ongoing. [note: 105] Clearly, they had ample means and opportunity to make restitution, at least in part, to the victims of the Boron Scheme. However, no restitution was made. During investigations, the CAD seized a sum of money from PPPL's bank accounts of which only about S$66,000 remains. I think it is appropriate to consider the lack of restitution in the present case to be an aggravating factor.

Whether the Appellants showed a lack of remorse by claiming trial

103 The Appellants also argue that the DJ was biased in saying that they showed a lack of remorse in claiming trial because this led to Geraldine's acquittal and prevented a miscarriage of justice.

104 It is not an aggravating factor to claim trial (*Kuek Ah Lek v Public Prosecutor* [1995] 2 SLR(R) 766 at [65]). However, the DJ was correct to treat the Appellants' conduct at trial as an aggravating factor. For example, it is an aggravating factor for an accused to defiantly maintain his position despite the overwhelming evidence to the contrary (*Lee Foo Choong Kelvin v Public Prosecutor* [1999] 3 SLR(R) 292 at [36] *per* Yong CJ) or to prolong the trial unnecessarily (*Wan Kim Hock v Public Prosecutor* [2003] 1 SLR(R) 410 at [27]). The Appellants here did just that. Despite the evidence, they maintained they had no knowledge of the Boron Scheme and blamed virtually everyone except themselves for PPPL's downfall. They blamed the CAD for intervening, third parties for speaking up in the public sphere and hastening PPPL's downfall, Investors for trying to defraud them and John Gaunt when he had little to do with the Boron Scheme in the first place. The Appellants even accused many witnesses of lying. [note: 106] All these led to a trial that lasted 64 days. On appeal, they tried to reopen factual findings which were grounded in an abundance of evidence and they repeatedly accused the Prosecution and the DJ of misrepresenting the evidence. [note: 107]

105 Accordingly, the DJ was right insofar as he considered that the Appellants' conduct at trial was an aggravating factor.

The sentencing precedents

106 With that, I turn to the Prosecution's submissions. I am of the opinion that the current sentence is not manifestly inadequate. It is not "unjustly lenient" such that it "requires substantial alterations rather than minute corrections to remedy the injustice" (*Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [15]). Based on the three sentencing markers that I will discuss, I think that the sentences imposed by the DJ are sufficient punishment for the Appellants.

107 The first precedent is *Phang Wah* (mentioned at [96] above). The exact amount of losses there

was unknown but it ran into the millions (*Phang Wah (DC)* at [334]; *Phang Wah* at [75]). The two accused persons were sentenced to 4.5 years' and 3.5 years' imprisonment respectively. The Prosecution takes further issue with comparing this case with *Phang Wah* on the basis that the accused persons there faced a single charge of fraudulent trading under s 340(5) read with s 340(1) of the Companies Act (Cap 50, 2006 Rev Ed) ("CA"), which encompassed the entire business activity, whereas the Appellants face 18 distinct and specific charges each of conspiring to cheat under s 420 read with s 109 of the PC. Although I appreciate this distinction, *Phang Wah* does offer some guidance as a precedent because the intention behind the underlying scheme there and the scheme here is broadly similar. However, the sentencing spectrum under s 340 of the CA is different, *ie*, it carries a maximum fine of up to $15,000 or imprisonment term of up to seven years or both. In contrast, s 420 of the PC carries a mandatory imprisonment term of up to 10 years and a discretionary fine.

108 The next precedent is *Rahj Kamal*. There, the accused devised a scheme called the "Directorship Programme". For a $25,000 or $30,000 "interest-free personal collateral loan" to his company, a participant was guaranteed monthly "goodfaith gifts" of $3,000 after three or four months indefinitely and a refund of the capital sum within two years. The company's only business activity, however, was the collection of funds from the public through similar schemes. A total of $175,000 was taken. The accused was sentenced to two years' imprisonment on each of three charges of cheating under s 420 of the PC and three charges of fraudulent trading under s 340(1) read with s 340(5) of the CA. On appeal, his sentence was enhanced to an aggregate of eight years' imprisonment.

109 In my view, the DJ was not wrong to find that the present case was comparable to *Rahj Kamal*, despite the fact that a total of US$732,000 was involved here. First, the appellant in *Rahj Kamal* ran a complete scam; he had absolutely no income-generating business (at [19] and [33]). In contrast, the Boron Scheme was not entirely fraudulent although, as I have mentioned, any genuine business was but a very small part of the entire scheme. Second, the appellant there behaved egregiously by preying on the vulnerable with emotional appeal. He projected himself as the "economic saviour of the Malay community" and abused the trust obtained by "using religion to back up his promises" (at [37]). Third, in *Rahj Kamal*, the original sentence was doubled (without an appeal by the Prosecution) partly on the basis of the appellant's deplorable conduct at trial (at [38]). The Appellants here showed no remorse in the conduct of their trial and their conduct was rightly considered to be an aggravating factor. However, they have not gone to the extent of arguing with the court after it has given its rulings and embarrassing witnesses with irrelevant, scandalous questions, as was the case in *Rahj Kamal*.

110 The third precedent cited is *Public Prosecutor v Lam Chen Fong* [2002] 2 SLR(R) 599 ("*Lam Chen Fong*"). There, the accused offered highly favourable exchange rates for his money remittance business, on the condition of a one-month lead-time. This allowed him to roll over funds and create a money circulation scam to feed his gambling habit. Within three months, he embezzled almost $8.8m from over 1,000 foreign workers for whom the respective amounts of money were a large part of their savings. Only $905,000 was recovered. The accused pleaded guilty to, among other charges, 20 charges of criminal breach of trust as an agent under s 409 of the Penal Code (Cap 224, 1985 Rev Ed) (with 1,190 other charges taken into consideration). He was sentenced to seven years' imprisonment on each s 409 charge and to an aggregate of 22 years' imprisonment. At the material time, s 409 provided for imprisonment for life or up to ten years and a discretionary fine. The loss occasioned in the present case was US$732,000. Therefore, even if *Lam Chen Fong* was used as a comparison, the sentences here would not appear to be too lenient when the amounts of the money taken are compared.

111 The cases discussed above suggest that the Appellants' sentences of seven and eight years'

imprisonment are not unduly harsh. They could not be said to be too lenient either.

112 Goldring was given a slightly lighter sentence by the DJ on account of his lesser role in the entire scheme. On appeal, Goldring ironically expressed his "chagrin" at having been called Nordmann's "side-kick" by the DJ. [note: 108] In my opinion, Goldring played a very significant role even though his work related more to the infrastructure of the Boron Scheme. However, the DJ was justified in saying that Nordmann played a larger role to the extent that he was effectively the mouthpiece for the defence. In any case, considering the overall circumstances of this case, I do not think that the DJ would be wrong even if he had given Goldring the same sentence as Nordmann's.

113 In my opinion, the sentences imposed are neither manifestly excessive nor manifestly inadequate. I therefore see no reason to reduce or to enhance the sentences.

Conclusion

114 I affirm the conviction of both Appellants on their charges (as amended by the DJ) and uphold the sentences imposed. Accordingly, the appeals by the Appellants (against conviction and sentence) and by the Prosecution (against sentence) are dismissed.

115 The sentences are to commence today unless otherwise ordered upon application.

[note: 1] Oral Arguments, 16 Feb 2015.

[note: 2] 1 ROP 67–76 (Goldring's Petition of Appeal, para 2(cc)(1)–(196); 1 ROP 83–92 (Nordmann's Petition of Appeal, para 2(cc)(1)–(196); Appellants' Submissions, Appendix 2, at pp 154, 160–288, 799–800; Appellants' Further Submissions, paras 70, 73, 88, 96, 101, 102, 105, 113, 117, 192, 239, 282–284, 300, 301, 335, 339, 361–365, 371(xv); Oral Arguments (20 April 2015).

[note: 3] 1 ROP 66–67 (Goldring's Petition of Appeal, para 2(f), (o), (q), (t), (y), (z); 1 ROP 82–67 (Nordmann's Petition of Appeal, para 2(f), (o), (q), (t), (y)–(z).

[note: 4] Appellants' Submissions, paras 402–405, 445–454, 637–641; Appellants' Further Submissions, paras 203–207, 371(viii), (ix), (xii); Oral Arguments (20 April 2015).

[note: 5] 1 ROP 66 (Goldring's Petition of Appeal, para 2(e); 1 ROP 82 (Nordmann's Petition of Appeal, para 2(e); Appellants' Submissions, paras 21, 328–361.

[note: 6] 1 ROP 65–66 (Goldring's Petition of Appeal, para 2(a), (b), (c), (h); 1 ROP 81–82 (Nordmann's Petition of Appeal, para 2(a), (b), (c), (h); Appellants' Submissions, para 2, 23, 66, 121–143, 166–202, 251–327, 362–409, 523, 561–635, 758–788, 812; Appellants' Further Submissions, paras 88, 95–117, 124–125, 130–134, 145, 156–159, 169–170, 179–182, 353; Oral Arguments (20 April 2015).

[note: 7] 1 ROP 66–67 (Goldring's Petition of Appeal, para 2(g), (x); 1 ROP 82–83 (Nordmann's Petition of Appeal, para 2(g), (x); Appellants' Submissions, paras 249–250, 486–497, 502–507, 625–635; Appellants' Further Submissions, paras 27–53; Oral Arguments (20 April 2015).

[note: 8] Appellants' Submissions, paras 469–479; Appellants' Further Submissions, paras 355.

[note: 9] Prosecution's Submissions (Conviction), paras 37–47, 54–65.

[note: 10] Prosecution's submissions (Conviction), paras 72–76.

[note: 11] Prosecution's Submissions (Conviction), paras 31–32, 66–67; Prosecution's Further Submissions, paras 5–12.

[note: 12] Prosecution's Submissions (Conviction), paras 76–81, 88–97; Prosecution's Further Submissions, paras 37–49.

[note: 13] 25 ROP 71 (DB3, p 681, D114—Marketing Agreement with Fuel Economy); Appellants' Submissions, at paras 328–361. *Cf* 14 ROP 450 (P14—Marketing Agreement with Andrew Hind).

[note: 14] 15 ROP 116 (P65—E-mail from Goldring to ALT dated 12 January 2010); GD at [539], referring to P171.

[note: 15] Case for Defence, 15 March 2013, paras 75–76; GD at [501]–[502].

[note: 16] 15 ROP 124 (P66—E-mail from Goldring to ALT); 27 ROP 270 (DB10 p 1979, D452—E-mail from Goldring to ALT). *Cf* GD at [453] and [456].

[note: 17] 14 ROP 450, 453 (P14—Marketing Agreement with Andrew Hind, Cl 3.20, Schedule 1); 25 ROP 71, 76 (DB3, p 681, 686, D114—Marketing Agreement with Fuel Economy, Cl 3.20.1, Schedule).

[note: 18] 15 ROP 322, 325, 329–330, (P87—EY Report, paras 6.14, 8.3–8.10); 15 ROP 685–768 (P87B—List of TB1s).

[note: 19] 15 ROP 329–330 (P87—EY Report, paras 8.10 and 9.8); 29 ROP 228 (D698—Sales in the Philippines).

[note: 20] 18 ROP 29, 42 (P92—Statement of Geraldine, Answers 193, 270).

[note: 21] Prosecution's Submissions (Conviction), paras 52–53.

[note: 22] Appellants' Submissions, paras 208 and 217–222; Appellants' Further Submissions, paras 3–6, 14–25.

[note: 23] 18 ROP 29 (P92—Statement of Geraldine, Answer 198); 21 ROP 405 (P145—Affidavit of Michael Phelps, Exh MSP-3—ALT Agreement, Cl 3).

[note: 24] 4 ROP 284–285 (NE, 17 July 2013, pp 9:21–10:22 (PW18, XX)); 10 ROP 613, 615 (NE, 7 January 2014, pp 93:13–93:18, 95:8–95:20 (DW1, XX)); Defence Closing Submissions, at paras 954–966.

[note: 25] 28 ROP 603 (DB13, p 2839, D646—Boron Scripts in SIS); GD at [682].

[note: 26] 28 ROP 601, 603 (DB13, pp 2837, 2839, D646—Boron Scripts in SIS); Defence Closing Submissions, at paras 534–555.

[note: 27] 17 ROP 308–309 (P91—Statement of Nordmann, Answer 825); 9 ROP 31–32 (NE, 24 October 2013, pp 29–30 (DW1, EIC)). *Cf* Prosecution's Submissions, para 44; Prosecution's further submissions, para 32.

[note: 28] 8 ROP 44–45 (NE, 16 October 2013, pp 42:8–43:25 (DW1, EIC)).

[note: 29] 9 ROP 30–32 (NE, 24 October 2013, pp 28:25–30:9 (EIC, DW1)).

[note: 30] 6 ROP 697 (NE, 13 September 2013, p 102 (PW39, EIC)); GD at[654]–[664].

[note: 31] See 16 ROP 32–33 (P90—Statement of Goldring, Ans 250–258); 17 ROP 31, 39 (P92—Statement of Geraldine, Ans 208–209, 258).

[note: 32] Appellants' Submissions, para 59.

[note: 33] 16 ROP 149 (P90—Statement of Goldring, Answers 330–334); 21 ROP 410 (ALT Agreement).

[note: 34] GD at [541], [680].

[note: 35] Appellants' Submissions, para 57.

[note: 36] 21 ROP 510–511 (P21—Minutes of Board Meeting, 30–31 October 2009); 21 ROP 533, 545–548 (P22—Minutes of Board Meeting, 19 December 2008); P21 ROP 561–564 (P23—Minutes of Board Meeting, 19 July 2008); 21 ROP 588–593, 612–613 (P27—Minutes of Board Meeting, 26 September 2008); Appellants' Submissions, para 57.

[note: 37] Appellants' Submissions, paras 121–143.

[note: 38] 21 ROP 545–548 (P22—Minutes of Board Meeting, 19 December 2008).

[note: 39] 11 ROP 107–108 (NE, 9 January 2014, pp 105–106 (XX, DW1)); 21 ROP 525, 535 (P150–Statement of John Gaunt, Ans 10).

[note: 40] **Warren Chelvam:** 4 ROP 187–188, 265–269, 278–280,327–330 (NE, 16 July 2013, pp 69:11–70:21 (PW18, EIC), 147:23–151:9, 17 July 2013, pp 3:18–5:12 (XX), pp 52:24–55:11 (RX));**Mohammed Maideen**: 5 ROP 209–222, 309–310, 500–506 (NE, 26 July 2013, pp 35:8–48:16 (PW25, EIC), pp 135:4–136:17, 29 July 2013, pp 179:8–185:15 (XX)); 25 ROP 107 (DB3, p 717—E-mail from Mohammed Maideen);**Hussam Adeni**: 3 ROP 643–644 (NE, 11 July 2013, pp 6:17–7:24 (PW16, EIC));**Rio Harsono**: 4 ROP 628 (NE, 23 July 2013, pp 125:8–10 (PW22, XX)).

[note: 41] 15 ROP 60 (P50—E-mail from Goldring to John Gaunt).

[note: 42] 20 ROP 186 (P129); *cf* 14 ROP 364 (P10).

[note: 43] **Lium Ming Toon**: 3 ROP 305–310 (NE, 8 May 2013, pp 139:16–144:1 (PW13, EIC));**Rebecca Cheung**: 4 ROP 14–19, 58–61 (NE, 15 July 2013, pp 12:20–17 (PW17, EIC), pp 56:16–59:11 (XX));**Warren Chelvam**: 4 ROP 192–206, 262–269 (NE, 16 July 2013, pp 74:9–88:5 (PW18, EIC),

pp 144:14–151:9 (XX));**Tan Zheqi**: 4 ROP 507–509 (NE, 23 July 2013, pp 4:4–6:15 (PW21, EIC));**Rio Harsono**: 4 ROP 599 (NE, 23 July 2013, pp 96:10–16 (PW22, EIC));**Simon Dawson**: 5 ROP 90–95, 100–105 (NE, 25 July 2013, pp 88:5–93:10, 98:13–103:19 (PW24, EIC));**Peter Lourdes**: 6 ROP 79–81, 135 (NE, 19 August 2013, pp 77:19–79:15 (PW28, EIC), p 133:8–133:16 (XX));**Sultana Maideen**: 6 ROP 141–148, 169, 172, 220–224 (NE, 20 August 2013, pp 3:9–10:6 (PW29, EIC), p 31:13–34 (XX), pp 82:16–86:14 (RX));**Ranjit Kaur**: 6 ROP 395–398, 433–435 (NE, 11 September 2013, pp 47:7–50:19 (PW35, EIC), pp 85–87:4 (XX));**Cedric de Souza**: 6 ROP 688 (NE, 13 September 2013, p 93 (PW39, EIC));**Jason Selvaraj**: 6 ROP 718, 721, 745–746 (NE, 13 September 2013, pp 123, 126 (PW40, EIC), pp 150:17–151:25 (XX));**Nicholas Naresh**: 7 ROP 12–15 (NE, 17 September 2013, p 10:25–13:14 (PW41, EIC)).

[note: 44] 1 ROP 66 (Goldring's Petition of Appeal, para 2(d); 1 ROP 82 (Nordmann's Petition of Appeal, para 2(d); Appellants' Submissions, paras 362–389, 623; Appendix 2, pp 172, 174, 176–180, 183–184, 189–190, 198–201; Appellants' Further Submissions, paras 113–117, 145, 156–159; Oral Arguments, 20 April 2015.

[note: 45] 5 ROP 90–92 (NE, 25 July 2013, pp 88:5–90:13 (PW24, EIC)); 6 ROP 79–83 (NE, 19 August 2013, pp 77:5–81:15 (PW28, EIC)).

[note: 46] 10 ROP 554–556 (NE, 7 January 2014, pp 34:18–36:18); Defence Closing Submissions, paras 966–971.

[note: 47] 20 ROP 190 (P130), 20 ROP 194 (P132).

[note: 48] Appellants' Submissions, paras 410–417.

[note: 49] D318 (Video of Hong Kong Interview), *cf* 20 ROP 190–192 (P130–P131).

[note: 50] (NE, 20 November 2013, pp 93–97 (DW1, XX)); 15 ROP 326 (EY Report, para 6.16).

[note: 51] 14 ROP 346 (P5).

[note: 52] 9 ROP 449 (NE, 29 October 2013, p 21 (DW1, XX)); 3 ROP 566 (NE, 10 July 2013, p 50 (PW15, EIC)); 10 ROP 26–37 (NE, 31 October 2013, pp 24–25 (DW1, XX)).

[note: 53] 10 ROP 423–426 (NE, 21 November 2013, p 86–89 (DW1, XX)).

[note: 54] 14 ROP 548 (P22).

[note: 55] 21 ROP 531 (P150).

[note: 56] 8 ROP 298–300 (NE, 21 October 2013, pp 7:23–9:15 (DW1, EIC)); Appellants' Submissions, p 219.

[note: 57] 5 ROP 223–224, 260–270 (NE, 26 July 2013, pp 49:12–50:23, 86:10–96:17 (PW25, EIC)); 15 ROP 31–59 (P38–P49); GD at [210], [541].

[note: 58] 14 ROP 548 (P22).

[note: 59] See, *eg*, 15 ROP 60–61 (P50); 15 ROP 94–95 (P53); Prosecution's Further Submissions, para 24.

[note: 60] 16 ROP 24 (P90 — Statement of Goldring, 11 August 2010, Ans 187).

[note: 61] 17 ROP 533–534 (P91 — Statement of Nordmann, 3 January 2011, Ans 917–918).

[note: 62] See, *eg*, 15 ROP 12 (P33); 14 ROP 463, 480 (P15, P18); 14 ROP 341 (P3).

[note: 63] 7 ROP 632 (NE, 14 October 2013, p 6), *cf* 7 ROP 628 (NE, 14 October 2013, p 2).

[note: 64] Appellants' Submissions, para 68.

[note: 65] Appellants' Submissions, para 484; Appellants' Further Submissions, paras 38(i)–(xviii), 43, 62–70; Oral Arguments (20 April 2015).

[note: 66] Appellants' Submissions, paras 249–250, 484–507; Appellants' Further Submissions, paras 27–53, 60–61, 71–73; Oral Arguments (20 April 2015).

[note: 67] Appellants' Submissions, paras 492–494; Appellants' Further Submissions, paras 37, 40, 41, 371(v).

[note: 68] Prosecution's Submissions (Conviction), paras 31–32; Prosecution's Further Submissions, paras 6, 11–12.

[note: 69] Prosecution's Further Submissions, paras 5–6.

[note: 70] Prosecution's Further Submissions, paras 7, 9–10.

[note: 71] Prosecution's Further Submissions, para 8.

[note: 72] For investors who said they did not rely on the Representations/Brochure, see:**C5**: 2 ROP 755–759 (EIC of PW11, NE, 6 May 2013, pp 131:1–135:22); 3 ROP 57–63 (XX of PW11, NE, 7 May 2013, pp 55:15–61:23);**C6**: 2 ROP 450–457 (XX of PW8, NE, 2 May 2013, pp 79:16–86:12);**C8**: 2 ROP 232–234 (RX of PW5, NE, 30 April 2013, pp 54:11–56:21);**C10**: 7 ROP 563–565 (XX of PW44, NE, 4 October 2013, pp 39:5–41:23);**C15**: 2 ROP 290–295 (XX of PW6, NE, 30 April 2013, p 112:10–117:23);**C18**: 4 ROP 419–421 (XX of PW19, NE, 18 July 2013, pp 51:11–53:7).

[note: 73] 2 ROP 379–380, 632 (EIC of PW8, NE, 2 May 2013, pp 8:15–9:4; EIC of PW10, NE, 6 May 2013, p 8:20–8:23). *Cf* 20 ROP 4–22 (ASOF), where it is nowhere stated that the Investors signed the document before filling out the PRF.

[note: 74] **C1**: 5 ROP 767–768 (NE, 31 July 2013, pp 131:6–132:17 (PW27, EIC)); 18 ROP 288 (P95); 20 ROP 7 (ASOF, para 16(i)–(ii));**C2**: 4 ROP 683–691, 699–701 (NE, 24 July 2013, pp 24:10–32:25, 40:6–42:13 (EIC, PW23)); 18 ROP 377, 413, 424–429 (P97);**C3**: 2 ROP 31–35, 61–62, 66 (NE, 29 April 2013, pp 29:1–33:25 (PW4, EIC); pp 59:16–60:6, 64:2–64:20 (XX));**C4**:2 ROP 632–643, 669–670 (NE,

6 May 2013, pp 8:20–19:2 (PW10, EIC); 45:4–36:15 (XX));**C5**: 2 ROP 764–766 (NE, 6 May 2013, pp 140:2–142:1 (EIC, PW11));**C6**:2 ROP 384–385, 464–473 (NE, 2 May 2013, pp 13:21–14:4 (PW8, EIC), pp 93:6–102:10 (XX));**C7**: 2 ROP 303–306 (NE, 30 April 2013, pp 125:16–128:13 (PW7, EIC)); 20 ROP 14 (ASOF, paras 32(ii)–33);**C8**: 2 ROP 131–132 (NE, 29 April 2013, pp 129:19–130:11 (PW5, EIC));**C9**: 4 ROP 459–467 (NE, 18 July 2013, pp 91:7–99:23 (PW20, EIC));**C10**: 7 ROP 532–537 (NE, 4 October 2013, pp 8:19–13:6 (EIC, PW44)); 19 ROP 450–451 (P109);**C11**: 3 ROP 95–106, 114–115 (NE, 7 May 2013, pp 93:15–104:24, 112:20–113:1 (EIC, PW12)); 19 ROP 167, 186 (P106);**C12**: 6 ROP 516–520 (NE, 12 September 2013, pp 47:24–51:12 (EIC, PW37)); 19 ROP 459 (P110);**C13**: 19 ROP 284–309 (P107);**C17**: 5 ROP 343–345 (NE, 29 July 2013, pp 22:1–24:16 (EIC, PW26)); 19 ROP 321 (P108);**C18**: 19 ROP 86 (P103); 20 ROP 22 (ASOF, paras 53(ii)–54);**C19**: 6 ROP 85–87 (NE, 19 August 2013, pp 83:9–85:25 (EIC, PW28));**C20**: 4 ROP 512–520 (NE, 23 July 2013, pp 9:4–17:1 (EIC, PW21)); 19 ROP 159 (P105).

[note: 75] **C15**: 2 ROP 244–248 (NE, 30 April 2013, pp 66:25–70:8 (PW6, EIC)); 18 ROP 352 (P96).

[note: 76] 9 ROP 188–190 (NE, 25 October 2013, pp 1–3 (XX of DW1)); 9 ROP 670–672 (NE, 30 October 2013, pp 65, 82 and 83 (XX of DW1)); Defence Closing Submissions, para 490.

[note: 77] Appellants' Submissions, paras 486, 498–502; Appellants' Further Submissions, paras 54–61; Oral Arguments (20 April 2015).

[note: 78] 1 ROP 66 (Goldring's Petition of Appeal, para 2(p); 1 ROP 82 (Nordmann's Petition of Appeal, para 2(p); Appellants' Submissions, paras 17, 541–560.

[note: 79] 1 ROP 66 (Goldring's Petition of Appeal, para 2(i)–(j), (r)–(s); 1 ROP 82 (Nordmann's Petition of Appeal, para 2(i)–(j), (r)–(s); Appellants' Submissions, paras 16, 18, 636–757; Appellants' Further Submissions, paras 260–264, 269–270, 274–280, 287; Oral Arguments (20 April 2015).

[note: 80] 1 ROP 66 (Goldring's Petition of Appeal, para 2(k)–(n), (r); 1 ROP 82 (Nordmann's Petition of Appeal, para 2(k)–(n), (r); Appellants' Submissions, paras 19–20, 418–468, 793–797; Appellants' Further Submissions, paras 260–263, 265–268, 271–273, 279, 281–284; Oral Arguments (20 April 2015).

[note: 81] 1 ROP 67 (Goldring's Petition of Appeal, para 2(u)–(v); 1 ROP 83 (Nordmann's Petition of Appeal, para 2(u)–(v); Appellants' Submissions, paras 9–13, 508–540; Appellants' Further Submissions, paras 288–342; Oral Arguments (20 April 2015).

[note: 82] 7 ROP 50 (NE, 17 September 2013, p 48 (PW41, XX)).

[note: 83] 10 ROP 693–700 (NE, 8 January 2014, pp 48–55 (DW1, XX)); 28 ROP 603–604 (DB14, pp 2839-2840, D646—SIS Scripts).

[note: 84] Appellants' Submissions, para 550.

[note: 85] 1 ROP 67 (Goldring's Petition of Appeal, para 2(aa)–(bb); 1 ROP 83 (Nordmann's Petition of Appeal, para 2(aa)–(bb).

[note: 86] Appellant's Submissions, at paras 809–813.

[note: 87] Appellant's Submissions, at paras 203–207, 821–823.

[note: 88] Appellant's Submissions, at paras 686–757, 816–820; Appellants' Further Submissions, paras 354.

[note: 89] Appellants' Submissions, paras 801–808; *cf* GD at [695(vi)].

[note: 90] Prosecution's Submissions (Sentence), at para 59; Prosecution's Further Submissions, at paras 68–73.

[note: 91] Prosecution's Further Submissions, at paras 50–67.

[note: 92] Prosecution's Submissions (Sentence), at paras 8–19.

[note: 93] Prosecution's Submissions (Sentence), at paras 20–54.

[note: 94] Prosecution's Submissions (Sentence), at paras 55–58.

[note: 95] Prosecution's Further Submissions, at para 52.

[note: 96] Prosecution's Further Submissions, para 53–56.

[note: 97] Oral Arguments, 20 April 2015.

[note: 98] 7 ROP 49 (NE, 17 September 2013, p 47 (PW41, XX)).

[note: 99] Prosecution's Further Submissions, at paras 56–67; Oral arguments (20 April 2015).

[note: 100] Prosecution's Further Submissions, at paras 59, 66; Oral arguments (20 April 2015).

[note: 101] Appellant's Further Submissions, at paras 213–251; Oral arguments (20 April 2015).

[note: 102] 7 ROP 705–707 (NE, 14 October 2013, pp 79–81); Prosecution's Further Submissions, at para 59.

[note: 103] 7 ROP 538–540 (NE, 4 October 2013, pp 14:4–16:11 (PW44, EIC)); 28 ROP 102 (DB12, p 2376, D567—Cheque dated 10 February 2010) **C20**: 4 ROP 520–523 (NE, 32 July 2013, pp 17:2–20:13 (PW21, EIC)).

[note: 104] 15 ROP 630 (P87—EY Report, Appendix 24).

[note: 105] 23 ROP 632–633 (Bills of Lading for Ocean Transport).

[note: 106] 5 ROP 563 (NE, 30 July 2013, p 27:11–15 (PW25, XX)); Appellants' Further Submissions, paras 346.

[note: 107] 1 ROP 67–76 (Goldring's Petition of Appeal, para 2(cc)(1)–(196); 1 ROP 83–92 (Nordmann's Petition of Appeal, para 2(cc)(1)–(196); Appellants' Submissions, Appendix 2, at pp 154, 160–288, 799–800; Appellants' Further Submissions, paras 70, 73, 88, 96, 101, 102, 105, 113, 117, 192, 239, 282–284, 300, 301, 335, 339, 361–365, 371(xv); Oral Arguments (20 April 2015).

[note: 108] Appellants' Submissions, para 60. *Cf* GD at [528].