

Public Prosecutor v Ong Eng Teck
[2012] SGHC 242

Case Number : Magistrate's Appeal No 221 of 2011
Decision Date : 30 November 2012
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : David Chew and Elena Yip (Attorney-General's Chambers) for the appellant; Wee Pan Lee (Wee Tay & Lim LLP) for the respondent.
Parties : Public Prosecutor — Ong Eng Teck

Offences – Property – Cheating

30 November 2012

Judgment reserved.

Lee Seiu Kin J:

1 The respondent, Ong Eng Teck ("Ong"), was charged with three counts of cheating under s 420 of the Penal Code (Cap 224, 1985 Rev Ed) and five counts of attempted cheating under s 420 read with s 511 of the Penal Code. The amended second charge (for cheating) and the amended nineteenth charge (for attempted cheating) read as follows:

AMENDED 2ND CHARGE :

You, Ong Eng Teck, are charged that you, the director of Integrative Therapy Centre Pte Ltd ("the Company"), on or around 4 July 2007, in Singapore, did cheat the Singapore Workforce Development Agency ("WDA"), to wit, by submitting, either personally or through your staff, one Wong Yin Lin Eileen, a subsidy claim for course fee, you deceived the WDA into believing that one Koh Chek Lian ("Koh") was an employee of Wellness For Life ("the Business") and that he was fully sponsored by the Business on the unsubsidised portion of the course fee for a "Professional Certificate in Ayurveda Massage" course which Koh had attended between 16 August 2006 and 27 January 2007, when in fact you knew that the said Koh was not an employee of the Business and that he was not so sponsored by the Business, and by such manner of deception, you dishonestly induced the WDA to deliver property to the Company, namely, a sum of \$2,250.00, and you have thereby committed an offence under Section 420 of the Penal Code, Chapter 224 (1985 Revised Edition).

AMENDED 19TH CHARGE:

You, Ong Eng Teck, are charged that you, the director of Integrative Therapy Centre Pte Ltd ("the Company"), on or around 28 May 2008, in Singapore, did attempt to cheat the Singapore Workforce Development Agency ("WDA"), to wit, by submitting, either personally or through your staff, one Wong Yin Lin Eileen, a subsidy claim for course fee, you attempted to deceive the WDA into believing that one M Vasanthi Pillay ("Vasanthi") was an employee of Art De Spa Pte Ltd ("the Applicant Company") and that she was fully sponsored by the Applicant Company on the unsubsidised portion of the course fee for a "Professional Certificate in Ayurveda Pharmacology" course which Vasanthi had attended between 13 November 2007 and 2 April 2008, when in fact

you knew that the said Vasanthi was not an employee of the Applicant Company and that she was not so sponsored by the Applicant Company, and by such manner of deception, you dishonestly attempted to induce the WDA to deliver property to the Company, namely, a sum of \$1,190.00, and you have thereby committed an offence under Section 420 read with Section 511 of the Penal Code, Chapter 224 (1985 Revised Edition).

2 The other six charges are similarly worded. The salient particulars of all eight charges are summarised in the following table:

DAC No	Offence	Trainee Involved	Applicant Company
2nd charge 24866 of 2010	Cheating the WDA to pay out \$2,250 under s 420 of the Penal Code	Koh Chek Lian	Wellness For Life
5th charge 24869 of 2010	Cheating the WDA to pay out \$2,250 under s 420 of the Penal Code	Kang Siew Hua	Choo Led Sin Clinic
6th charge 24870 of 2010	Cheating the WDA to pay out \$2,250 under s 420 of the Penal Code	Ler Kim Yok	Choo Led Sin Clinic
19th charge 24883 of 2010	Attempting to cheat the WDA of \$1,190 under s 420 read with s 511 of the Penal Code	M Vasanthi Pillay	Art De Spa Pte Ltd
33rd charge 24897 of 2010	Attempting to cheat the WDA of \$4,725 under s 420 read with s 511 of the Penal Code	Ng Meng Chye	Wellness For Life
41st charge 24905 of 2010	Attempting to cheat the WDA of \$2,250 under s 420 read with s 511 of the Penal Code	Ang Lee Teng	Choo Led Sin Clinic
42nd charge 24906 of 2010	Attempting to cheat the WDA of \$2,250 under s 420 read with s 511 of the Penal Code	Yau Sue Hsian	Choo Led Sin Clinic
43rd charge 24907 of 2010	Attempting to cheat the WDA of \$2,250 under s 420 read with s 511 of the Penal Code	Amie Yamaguchi	Choo Led Sin Clinic

3 On 14 September 2011, District Judge Kessler Soh ("the DJ") found that the case against Ong had not been proven beyond reasonable doubt, and acquitted Ong of all eight charges.

The Facts

The Skills Development Fund subsidy scheme

4 Ong was the sole proprietor of Integrative Therapy Centre from 2000 to 2006 and director of its successor entity, Integrative Therapy Centre Pte Ltd. Both will be referred to as "ITC". ITC provided training courses in Ayurvedic massage and Ayurvedic pharmacology. At the material time both courses

attracted a subsidy from the Skills Development Fund ("SDF"), which was administered by the WDA. The objective of the SDF was to encourage employers to upgrade their employees' skills. Under this scheme, companies and businesses ("Applicant Companies") could apply for training grants to fund their employees' participation in SDF-approved courses run by approved training providers ("Training Providers") such as ITC. Applicant Companies which successfully applied for training grants only had to pay a portion of their employees' fees ("the unsubsidised portion") for ITC's courses, leaving ITC to claim the balance of the employees' course fees from the SDF ("the subsidised portion") after the conclusion of the course. The amount of subsidy depended on the age and educational qualifications of the trainee-employee. The eight charges Ong faced related to subsidy claims he had made for trainees supposedly employed and sponsored by three Applicant Companies operating in the spa and wellness industry, namely Art De Spa Pte Ltd ("ADS"), Wellness For Life ("WFL") and Choo Led Sin Clinic ("CLSC").

5 The grant of SDF subsidy was governed by terms and conditions set out in two documents: (a) *Terms and Conditions for Registration of Training Providers as SDF EasyNet Users*, version 1.4 17 May 2004 ("2004 Terms and Conditions"); and (b) *Agreement Between the Singapore Workforce Development Agency (WDA) and Training Providers Using SDF EasyNet and Applying for Training Assistance*, version 3.0 1 June 2007 ("2007 Agreement"). Under these terms and conditions, there were two key requirements ("SDF subsidy requirements") which had to be met in order for a trainee to be eligible for SDF funding, namely:

- (a) the trainee had to be employed by the Applicant Company [\[note: 1\]](#) in accordance with the Employment Act (Cap 91, 1996 Rev Ed) ("employment requirement"); and
- (b) the unsubsidised portion of the course fees had to be paid by the Applicant Company and not the trainee [\[note: 2\]](#) ("sponsorship requirement").

6 In particular, cl 5.1(b) of the 2007 Agreement stated that:

... To illustrate, trainees who are recruited solely for the purpose of training and be [sic] released shortly from employment thereafter are not eligible for Training Assistance. ...

7 The Applicant Company's application for an SDF subsidy involved two stages:

(1) Before the commencement of the course, the Applicant Company had to submit an SDF subsidy application form ("subsidy application form") in respect of each trainee. This could be done online *via* WDA's electronic portal known as EasyNet or, if the Applicant Company did not have internet access, then by submitting to the Training Provider a physical subsidy application form known as an SEN-2 form. The Training Provider would then key the information reflected in the SEN-2 form into the electronic subsidy application form on EasyNet, and submit it electronically on behalf of the Applicant Company. Upon the WDA's approval of the subsidy application, the EasyNet system would generate an email to the Applicant Company stating the amount of the subsidised and unsubsidised portions of the course fees. The subsidised portion would be paid to the Training Provider by the SDF and while the unsubsidised portion would be paid by the Applicant Company [\[note: 3\]](#).

(2) After the trainee had completed the course, the Training Provider had to submit an electronic subsidy claim form ("subsidy claim form") via the EasyNet system. This form required the Training Provider to list out the names of the trainees whose subsidised portion of the course fees it was claiming, confirm that they had achieved the minimum attendance required to obtain a

subsidy, and confirm that the Training Provider agreed to the terms and conditions of the SDF subsidy. If the claim was approved by the WDA, the subsidised portion would be paid directly to the Training Provider.

Ong's subsidy claim submissions to the WDA

8 ITC was an approved training provider on EasyNet and Ong had a personal identification number ("PIN") to access EasyNet. It was undisputed that he submitted subsidy application forms to the WDA via EasyNet either personally or through one of his staff, Wong Yin Lin Eileen ("Eileen"). Two of the Applicant Companies with which Ong dealt, namely ADS and WFL, did not have internet access and hence submitted SEN-2 forms for the trainees associated with them. Eileen then keyed this information into the electronic subsidy application form and submitted it via EasyNet. The third Applicant Company, CLSC, had internet access and hence submitted the electronic subsidy application form directly via EasyNet in respect of the trainees associated with it. Both the hard copy and electronic subsidy application forms required the Applicant Company to complete a declaration section ("Declaration"), declaring that the trainee named in the form was a direct employee of the Applicant Company and was financially sponsored by it.

9 It was also undisputed that after the conclusion of the course, Ong submitted, either personally or through Eileen, the electronic subsidy claim forms via EasyNet on behalf of each of ADS, WFL and CLSC. Eileen only made submissions after obtaining Ong's approval [\[note: 4\]](#). The dates of the submissions are reflected in back-end printouts generated by the EasyNet system, which captured information filled into the electronic fields within the earlier subsidy application form, as well as the later subsidy claim form.

The Prosecution's case

10 Evidence was led by the prosecution from the proprietors of the three Applicant Companies, and the eight trainees who were associated with them:

- (a) Choo Led Sin ("Choo"), the proprietor of CLSC, who was associated with five trainees: Kang Siew Hua ("Kang"), Ler Kim Yok ("Ler"), Ang Lee Teng ("Ang"), Yau Sue Hsian ("Yau") and Amie Yamaguchi ("Amie");
- (b) Jane Tan Horton ("Jane"), the sole-proprietor of WFL who was associated with two trainees: Koh Chek Lian ("Koh") and Ng Meng Chye ("Ng"); and
- (c) Lee Siew Chin Mimosa ("Mimosa"), the director of ADS, who was associated with one trainee, Murugasu Vasanthi Pillay ("Vasanthi").

11 The prosecution submitted that Ong had cheated the WDA when submitting the SDF subsidy claim forms for the eight trainees, and had deceived the WDA into believing that the trainees were employed and fully sponsored for the courses by the Applicant Companies when he knew that they were not. He had thereby induced or attempted to induce the WDA into paying ITC the subsidised portion of the trainees' course fees. In support of its case, the prosecution led oral evidence from Choo, Jane and Mimosa testifying to the following:

- (a) Ong had approached them with the request to sponsor ITC's trainees who were unemployed or did not have an employer in the relevant industry.
- (b) Ong had asked them to ensure that the trainees appeared to be employees of the

Applicant Companies for the purpose of obtaining the SDF subsidy. This included completing the necessary documentation and paying the trainees' Central Provident Fund contributions ("CPF"), albeit out of sums provided by the trainees themselves.

(c) The trainees never did any work for the Applicant Companies and were never on their payrolls.

(d) The Applicant Companies had never contributed to any part of the trainees' course fees; all they did was to pay over to ITC sums which had been given to them by the trainees.

12 Further, each of the eight trainees testified during examination-in-chief, and maintained under cross-examination, that:

(a) each of them had told Ong before the commencement of the course that they were unemployed;

(b) Ong had referred each of them to one of the three Applicant Companies in relation to their desire to obtain an SDF subsidy for the ITC course which they wished to attend; and

(c) each of them had paid to ITC, through the Applicant Companies, sums representing portions of their course fees which Ong told them were to be borne by the trainees themselves.

The Defence's case

13 It was Ong's evidence that upon hearing from the trainees that they were unemployed, he had simply referred them to the Applicant Companies which he knew to be looking for additional manpower, and left them to make their own arrangements. He claimed to have simply relied on the Declaration contained in the hard-copy or electronic subsidy application forms which were submitted to the WDA either through ITC or directly on EasyNet respectively, and accordingly believed that the trainees were employed and fully subsidised by the Applicant Companies. He also claimed to have referred the trainees to the Applicant Companies under a WDA initiative known as the "place and train scheme". This scheme involved persons without relevant skills being first employed by companies, sent for training immediately, and commencing work only after completing the training. Ong relied on this argument to explain why it was that the trainees had not worked for the Applicant Companies even though they were purportedly employed by them.

The decision below

14 The DJ found that the prosecution's case was not proven beyond reasonable doubt. There were two strands to his finding:

(a) First, he found that the alleged acts of deception had not been proven because the content and date of each subsidy claim submitted by Ong had not been established.

(b) Second, he was not convinced that Ong knew that each trainee did not meet the employment and sponsorship requirements to make them eligible to obtain an SDF subsidy.

15 With regard to the first strand, the DJ was of the view that the prosecution's failure to produce an actual copy of the electronic subsidy claim form, constituted a "gap" in the prosecution's case [\[note: 5\]](#). He found that this "gap" could not be bridged by drawing inferences as to what the content of Ong's submissions to WDA were based on computer-generated EasyNet printouts which the

prosecution had produced as evidence, reflecting information submitted through subsidy application and claim forms and captured by the EasyNet system [\[note: 6\]](#). In addition, the DJ was also troubled by the subsidy claim submission dates, approval dates and payout dates as reflected in the EasyNet printouts. He found the time between the end of the course and some of the apparent submission dates unrealistically long (*ie*, up to one year and nine months), and the time between the claim submission, approval and pay-out dates unrealistically short (*ie*, one day for approval and a further five days for pay-out). The unlikely timelines led him to find that the EasyNet printouts were unreliable sources of evidence [\[note: 7\]](#).

16 With regard to the second strand, the DJ did not find that Ong had knowledge of the trainees' failure to meet the SDF subsidy requirements because he did not believe the oral evidence of Mimosa, Jane, Choo, and the eight trainees. He found the evidence of the trainees as a whole unconvincing owing to their relative age and the passage of time [\[note: 8\]](#). He also considered it necessary to exercise caution in relation to the evidence of Mimosa, Jane and Choo because they stood in the position of accomplices and hence were presumed to be unworthy of credit according to s 116 of the Evidence Act (Cap 97, 1997 Rev Ed) [\[note: 9\]](#). The DJ preferred the evidence of Ong and Eileen, finding plausible their explanations of various inconsistencies such as the trainees' purported payment of their own course fees, and the apparent backdating of invoices and receipts exchanged between ITC and the Applicant Companies.

Issues arising in this appeal

17 The two issues which arise at this appeal are:

- (a) whether the alleged acts of deception had been proved; and
- (b) whether Ong knew that each of the trainees did not meet the SDF subsidy requirements.

18 I will now consider each of these issues in turn.

Were the alleged acts of deception proved?

19 Ong was charged under s 420 of the Penal Code, which is set out in the following terms:

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

20 "Cheating" is defined by s 415 of the Penal Code in the following terms:

Whoever, by deceiving any person, whether or not such deception was the sole or main inducement, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to any person in body, mind, reputation or property, is said to "cheat".

Explanation 1.—A dishonest concealment of facts is a deception within the meaning of this

section.

Explanation 2.—Mere breach of contract is not of itself proof of an original fraudulent intent.

Explanation 3.—Whoever makes a representation through any agent is to be treated as having made the representation himself.

21 The elements of an offence under s 420 of the Penal Code were set out by Yong Pung How CJ ("Yong CJ") in *Gunasegaran s/o Pavadaisamy v PP* [1997] 2 SLR(R) 946 ("*Gunasegaran*") (at [42]-[44]). These are:

- (a) the victim had to be deceived;
- (b) there had to have been an inducement such that the victim delivered any property to any person; and
- (c) there had to have been a dishonest or fraudulent intention on the part of the deceiving person to induce the victim to deliver the property.

22 In *Chua Kian Kok v Public Prosecutor* [1999] 1 SLR(R) 826 ("*Chua Kian Kok*"), Yong CJ further indicated that the first two elements of the *Gunasegaran* formulation address the *actus reus* of the offence, while the third element addresses the *mens rea*. In the present case, the DJ's concern as to the "gap" in the prosecution's case related to the *actus reus* element of the s 420 of the Penal Code offence.

23 The first element of "deception" pertains to inducing a person to believe to be true something which is in fact false (*Rahj Kamal bin Abdullah v Public Prosecutor* [1997] 3 SLR(R) 227 *per* Yong CJ at [25]). In order to convict Ong, the prosecution would have to prove beyond reasonable doubt that Ong had practised the deception as their witnesses had alleged. This aspect is discussed from [28] to [60] below.

24 The DJ's concerns pertain mainly to the second element, that of inducement to deliver property. As explained at [15] above, the absence of an actual copy of the electronic subsidy application form submitted by Ong was, in the DJ's view, fatal to the prosecution's case at trial. This would mean that nothing less than screen-shots of the actual pages of the subsidy application form, captured in real-time at the moment when Ong had completed each field of the form, would suffice for the purpose of proving Ong's alleged deceptive submissions. I cannot agree with this approach. For the alleged inducement to deliver property to be made out, it is sufficient for the prosecution to prove that Ong did in fact submit forms meant to provide the WDA with information which it relied on to determine each trainees' eligibility for SDF subsidy, and that in reliance on the information submitted, the WDA did in fact pay out the subsidised portion of each trainees' course fee to ITC. In this connection, Ong admitted at trial that he had submitted the subsidy claim forms *via* EasyNet either personally or through Eileen, and that the forms he submitted were substantively similar to the screen-shots of claims submission pages he was shown during cross-examination [\[note: 101\]](#). With the substantive content of the actual subsidy claim forms already established by way of Ong's own admission, it is in my view the *fact* of Ong's submission of such forms and its *effect* on the WDA's beliefs that is of vital importance in a finding of inducement. In the circumstances, the inability of the prosecution to produce the actual forms he submitted is not fatal to their case. In the present case, there was no prejudice suffered to Ong as a result of their absence. A similar approach was taken in *Gunasegaran*, where Yong CJ rejected the defendant's contention that the exact content of words spoken to the victim on a specific date had not been proven, and explained that the focus was not

on the accused's specific words on one occasion but on the victim's mistaken beliefs brought about by the accused's various representations over a period of time (at [47]).

25 Further, I do not accept Ong's contention that it was the Applicant Companies, and not ITC, which represented to the WDA that the trainees met the SDF eligibility criteria. Ong argued that the subsidy claim forms which he admitted to submitting did not require ITC to make any declaration as to the trainees' employment and sponsorship status; and that the only such declarations were made by the Applicant Companies themselves when they completed the subsidy application forms either online or in hard-copy [\[note: 11\]](#). This argument is, in my view, a red herring. The prosecution's case is that Ong had, in each case, arranged it such that the trainee was made to look as if he or she was sponsored by an Applicant Company. The issue of which party had made the declaration is not relevant. It was Ong who submitted the electronic subsidy claim forms in full knowledge, on the prosecution's case, that there were no entitlements to any subsidy. This, in turn, led the WDA to believe that the trainees were employed and sponsored by the Applicant Companies when in fact they were not.

26 I therefore disagree with the DJ's conclusion, and find that, if the prosecution succeeds in proving knowledge on the part of Ong, the alleged acts of deception were proven in respect of all eight charges.

27 I now turn to consider whether Ong possessed such knowledge at the time of his claim submissions as would satisfy the mental requirement of dishonesty for the purpose of an offence under s 420 of the Penal Code.

Did Ong know that each of the trainees did not meet the SDF subsidy requirements?

28 While I appreciate the DJ's reservations as to the veracity of the trainees' and the three Applicant Company proprietors' oral evidence as a whole, the variation in tenor and content of each witness's testimony made it impossible for me to tar them all with the same brush. I found it necessary to examine the evidence of the proprietor of each Applicant Company alongside that of the trainees associated with him or her, as well as the available documentary evidence, in order to identify any congruence and to make a finding of Ong's mental state. I am aware of my limited position as an appellate court with regards to *findings of fact*, but I respectfully agree with the observation of V K Rajah JA in *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 that an appellate judge is as competent as a trial judge when it comes to assessing the material before drawing the necessary *inferences of fact* from the circumstances that the material reveals.

29 I turn first to the evidence of Mimosa and Vasanthi, the trainee whom ADS purportedly sponsored for an ITC course from 13 November 2007 till 2 April 2008.

Mimosa's evidence

30 Mimosa testified that she had never seen Vasanthi before and that Vasanthi was never on her payroll [\[note: 12\]](#). She had gotten involved with Vasanthi's case because Ong or Eileen had approached her to "help students who are above the age of 40 to let them have a skill" [\[note: 13\]](#), but she could not recall the details of what else she was instructed to do. She was asked to sign a SEN-2 form for Vasanthi's SDF subsidy application, although she claimed that the section declaring Vasanthi as an employee of and fully sponsored by ADS, was already filled in when she signed it. Mimosa also said she had been instructed by Ong during a meeting to prepare salary slips for Vasanthi [\[note: 14\]](#) even though Vasanthi had never worked for her. A set of salary slips [\[note: 15\]](#) on ADS's

letterhead and marked with Vasanthi's name, dated the first of every month from October 2007 till June 2008, was produced in evidence, which Mimosa said she had filled in "all at one go" [\[note: 16\]](#) when she was alone in her office.

31 At the trial, Mimosa was shown a table ("P11"), addressed "To: Miss Mimosa", which listed the personal contact and payment details of seven trainees, of which Vasanthi was one. Mimosa testified that P11 had been given to her by either Ong or Eileen together with the sum of money stated at the end of P11 [\[note: 17\]](#), for the purpose of indicating how much money ITC would be paying to ADS so that ADS could issue cheques to ITC accordingly [\[note: 18\]](#):

Q Have you ever issued a cheque for a trainee at ITC you did not employ?

A I did, but the money did not come from me.

Q Where did the money come from?

A That's the reason why they gave me the document P11.

Q Going back to P11, what has P11 got to do with payments by you through [your] chequing account at UOB?

A P11 is a document indicating how much [ITC] would be paying me, and then I would have to issue cheques according to what was stated in P11.

Q Who informed you of this arrangement?

A It is either Mr Ong or Eileen.

32 The last two columns of the table were headed "Course fee paid" and "CPF & admin \$310/=". The course fee listed under Vasanthi's name was \$1,310. A similar amount was reflected in an invoice from ITC to ADS dated 10 November 2007 and an ITC receipt dated 18 December 2007, both referencing Vasanthi's course fees. Upon being shown these documents during examination-in-chief, Mimosa confirmed that she had issued a cheque for Vasanthi's course fees based on the amount stipulated in P11, but that the money had come from ITC and not ADS [\[note: 19\]](#).

33 Mimosa also testified (as did Choo and Jane) that it was Ong who told her to pay Vasanthi's CPF, and that the money for this purpose was obtained from ITC [\[note: 20\]](#). Mimosa could not explain the computation of the sum of "\$310" listed under the "CPF & admin" column of P11 because she said the figure was simply given to her by ITC to cover each trainee's CPF from October 2007 until April 2008 [\[note: 21\]](#).

Vasanthi's evidence

34 Vasanthi's evidence appeared to me to be the most consistent and coherent of all the trainees'. She had clear recollection of the incidents and did not vacillate when her statements were challenged during cross-examination, unlike some of the other trainees. As such, I was inclined to give greater weight to her evidence.

35 Vasanthi said that she first met Ong on 23 November 2007, one day after she returned from holiday in Australia. The meeting occurred at one of the previews which Ong regularly conducted to

introduce ITC's courses. At the preview, Vasanthi filled up an ITC course enrolment form which was produced in evidence [\[note: 22\]](#), although this was dated 10 November 2007 [\[note: 23\]](#). She said that she left the fields titled "Company" and "Designation" blank because she was unemployed at the time, and that the words "Art De Spa" and "Consultant" which are now written in those fields must have been written by someone else.

36 Vasanthi said that when she asked Ong at the preview if she was eligible for the SDF subsidy on 23 November 2007 (which she had seen from a poster at the ITC premises) he had told her she was, because she was "a graduate" [\[note: 24\]](#). Hence it seems that he did not tell her the true requirements for SDF subsidy eligibility. He simply told her there was an "agreement with Mimosa that allows students to get subsidy" [\[note: 25\]](#). This was the first time that Vasanthi had heard about Mimosa and ADS. When presented with a SEN-2 form submitted by ADS and bearing her name, Vasanthi made clear that the declarations that she was an ADS employee and earning "below \$750", were not true, as she was not working at that time [\[note: 26\]](#). According to her, the extent of her interaction with Mimosa was restricted to one brief encounter in July 2008, when she and three other trainees were instructed by Ong "to go to Art De Spa, because the SDF officers will be asking [them] questions about Art De Spa". The trainees were told to "familiarise themselves" with the premises [\[note: 27\]](#). During that visit, Vasanthi said that they were met by a lady whom the other trainees later identified as Mimosa. Vasanthi said that she only said "hello" to Mimosa when the group first entered, and the two subsequently did not speak at all because Mimosa was conversing with the rest of the group in Mandarin throughout the visit [\[note: 28\]](#).

37 Vasanthi said that she was not surprised to be presented in court with ADS salary slips bearing her name, because Ong had arranged a meeting in or around July 2009 between Mimosa and some trainees so that the latter could sign salary slips. Vasanthi did not attend, although she says that Ong asked her to [\[note: 29\]](#).

38 Vasanthi testified to having paid the following sums to ITC:

(a) \$300 in cash on the day of the preview, because Ong had told her to "put in a deposit first" [\[note: 30\]](#). She was issued a receipt [\[note: 31\]](#) by "somebody from ITC".

(b) \$1210 in cash on a separate occasion, for which she was issued a receipt dated on 26 November 2007 [\[note: 32\]](#). Her impression was that this \$1210 represented the course fee less the SDF subsidy, though she was not told what percentage that would be. As she had difficulty coming up with the course fees, Ong "was kind enough to let [her] pay [the course fees] by instalment" [\[note: 33\]](#). This strongly indicates to me that, contrary to Ong's claim, he did not plan for the trainees to simply provide a deposit which could be set-off against their employers' later payment of course fees to ITC - he intended for the trainees to pay the entire course fees (by instalment or otherwise).

(c) \$310 in cash, for which she was given a receipt [\[note: 34\]](#) dated 17 December 2007. This is the same date stated on P11.

Analysis of the evidence

39 Neither Vasanthi nor Mimosa gave any indication that Ong had referred Vasanthi to ADS as a potential employee, and then "left them to make their own arrangements" as he stated in his defence.

He did not so much as arrange an initial meeting or give Vasanthi ADS's address such that Vasanthi could have been interviewed there. Vasanthi was simply told that there was "an arrangement" with Mimosa to enable her to obtain the SDF subsidy. The two had negligible contact, if indeed any at all. Eileen said in cross-examination that Ong had passed a message to her that Vasanthi would be going to ADS for an interview [\[note: 35\]](#), but there was no mention of how this was conveyed to Vasanthi herself.

40 Vasanthi and Mimosa's oral evidence of Ong's role in sustaining the appearance of employment is corroborated by documentary evidence such as the falsified payslips, and the P11 table. Both Mimosa and Vasanthi testified that the payslips were Ong's initiative - Mimosa's evidence that she had completed and signed the payslips alone is borne out by the fact that all the slips appear to be written with the same ink and in the same hand, and resounded with Vasanthi's evidence that she had not attended the signing that Ong arranged. Had the employment relationship been genuine, there is no reason why these payslips spanning nine months would have remained unsigned. The fact that the payslips were seized by the Commercial Affairs Department at ITC's premises put paid to Ong's claim that he was ignorant of and did not probe into any employment relationship that might have developed after his initial referral, because then there would have been no reason for him to request and obtain such details from ADS as payslips.

41 The most telling piece of documentary evidence to me is P11, which appears to me to be a tracking document. The sums recorded therein under Vasanthi's name accord with the amounts that Vasanthi paid to ITC, as borne out in her oral evidence as well as the documentary evidence of invoices and receipts. P11 states that Vasanthi's course fee was \$1310. Of the \$300 and \$1210 paid to ITC, it seems that \$1310 was for the course fees and \$200 was for exam fees, as was confirmed by Eileen during cross-examination [\[note: 36\]](#). Hence it is not true that the \$300 was a "deposit". As for the remaining \$310 paid, Eileen was equivocal when shown the same value reflected on P11 under the column "CPF and admin" [\[note: 37\]](#). Vasanthi says that she did not ask what this sum was for, and was not told [\[note: 38\]](#), but she thinks it "has to be for the course" [\[note: 39\]](#). She testified that "everybody knew" (referring to the trainees) that this sum would eventually be paid to Mimosa [\[note: 40\]](#), and that Ong had told her that this arrangement was in accordance with the law; part of "the necessary things, and necessary arrangement" [\[note: 41\]](#) to enable her to get the SDF subsidy. This evidence strongly suggests that ITC was keeping tabs on ADS's CPF contribution - something which is totally out of accord with Ong's claim of non-involvement with ADS's and Vasanthi's employment relationship. Eileen's evidence was that she created P11 as a personal favour upon Mimosa's request, because Mimosa was an ex-student of ITC [\[note: 42\]](#). She explained that Mimosa had asked her to help collect money from the ADS trainee-employees listed in P11, and that P11 served as a form of acknowledgment of receipt when ITC handed the money collected from the trainees to Mimosa so that there would be "no dispute in the future" [\[note: 43\]](#) as to whether this money was handed over. This explanation strikes me as implausible for two reasons: First, it seems absurd that ADS should be asking ITC, a mere training provider, to collect sums from its own employees and then repay such sums to ADS, in exchange for ADS then issuing a cheque for the corresponding value to ITC. Such an arrangement is as illogical as it is convoluted, as an employer could surely more easily have obtained any payments required from the employees themselves. Secondly, there is no indication of Vasanthi subsequently being reimbursed by ITC for money she supplied to ITC to pay for her own course fees, and no indication of Ong suggesting the same. Rather, there is every indication that Vasanthi thought that these payments were hers to bear. Thirdly and most tellingly, the existence of a column in P11 headed "CPF & Admin" does not fit into Eileen's explanation that the document was used to track *course fee payments* made by trainees on behalf of ADS, because there is no reason why the trainees should then be *contributing to their own CPF, through ITC, as well*. I find Mimosa's

explanation that P11 was created within ITC independently of Mimosa's knowledge or instruction, and then handed to Mimosa together with the total sum stated in P11 so that Mimosa would know the breakdown of the amount to be paid for each trainees' CPF and course fees, far more logical.

42 Finally, Vasanthi's recount of the visit to ADS which Ong arranged for her in preparation for WDA questioning was highly detailed and cogent, and I find it improbable that such an incident could be a figment of her imagination or poor memory, regardless of her age or the passage of time. Indeed, Ong's shadow seemed to lurk in every aspect of the illusory employment relationship. Had Ong truly believed Vasanthi to be duly employed by ADS, as he claimed to have done in reliance on the SEN-2 declaration, there would be no need for him to orchestrate the payslip-signing, the payment of Vasanthi's monthly CPF for the duration of the course, and Vasanthi's recce to ADS, nor to track the values of CPF that ADS was paying its own employees.

43 In sum, I find that the combination of Vasanthi and Mimosa's oral evidence and the available documentary evidence, coupled with the implausibility of Eileen's evidence with regards to P11, overwhelmingly point to Ong's hand behind the sham employment relationship. I am hence convinced beyond reasonable doubt that Ong knew that Vasanthi was not employed nor sponsored by ADS, and had in fact plotted and schemed to pull the wool over the WDA's eyes in order to secure the unsubsidised course fee payout from the SDF to ITC.

44 I turn next to consider the evidence relating to Jane and the two trainees sponsored by her company, WFL.

Jane's evidence

45 Like Mimosa, Jane testified that Ong had approached her to help sponsor ITC trainees, telling her that she had only to prepare the necessary documents and make manifest CPF contributions out of sums provided by the trainees themselves [\[note: 44\]](#) _:

Q: Did [Ong] tell you how you were going to help them?

A: Yes, he said just sponsor them.

Q: Anything else?

A: Just sponsor them in paperwork. And he said that it is just only the procedure, so that these people can enrol for the class. Initially I turned him down, I said "so troublesome".

Q: Did he tell you the paper work that needed to be done in order to help the students?

A: Yes, he says that, "to be like your employee, that means to be the sponsor, so you got to prepare the CPF for them". He said not to worry, the student will pay for the CPF themselves. I ever asked him, "Is this illegal or not?" And he asked me, "What is illegal? Are you cheating? Are you taking money from the student? No, right? In fact you are doing a good deed." So I thought, "OK".

Q: When he told you about paperwork, did he tell you anything else about the paper work that was required for these students?

A: The paperwork is the salary statement and the income tax statement. So he said it was just so simple, not to worry.

46 Like Mimosa, Jane maintained throughout the trial that she had never employed or sponsored the trainees associated with her (*viz*, Koh and Ng), and that the declarations of their employment, designation, salary and sponsorship by WFL on their SEN-2 forms, was "only a paperwork" [\[note: 45\]](#)_. When shown a set of payslips [\[note: 46\]](#)_ which stated that WFL had paid Koh salary of \$200 and CPF of \$26 per month from August till November 2006; she said that she had never made such payments and that the payslips were "only procedure for the paperwork for the course" [\[note: 47\]](#)_.

47 Jane's testimony that Koh came to her office to "make payment for CPF" [\[note: 48\]](#)_, upon Eileen's arrangement, corroborated Koh's own testimony [\[note: 49\]](#)_ that he paid \$279 to Jane for "stamp duty". Jane said that the trainees would pay her a lump sum to cover the CPF for all the months they were attending the course, and she would pay these in an advance lump sum at the CPF Board office [\[note: 50\]](#)_.

48 According to Jane's testimony, Ong was not ignorant of what transpired between Ng and Jane after Eileen's referral, but rather, worked hand in glove with Jane to create the fiction of Ng's and Koh's employment with WFL. On Ong's instructions, Jane prepared two IR8A forms in respect of Koh (P23 dated 31 December 2006 reflecting employment from August till November 2006) and Ng (P27, undated, reflecting employment from March till December 2007 - one month short of the duration of Ng's course). Jane was also shown two ITC invoices (one for Ng's course fees of \$525 dated 29 March 2007 [\[note: 51\]](#)_, and one for Koh's course fees of \$250 dated 7 August 2008 [\[note: 52\]](#)_), a payment voucher dated 16 August 2006 referring to the ITC invoice for Koh's fees [\[note: 53\]](#)_, and two ITC receipts of payment in respect of Koh and Ng's fees dated 16 August 2006 and 15 March 2007 respectively [\[note: 54\]](#)_. Jane maintained that this was mostly on paper and that she had never paid these sums to ITC [\[note: 55\]](#)_. In particular, WFL did not even have payment vouchers of the type produced in evidence [\[note: 56\]](#)_. The documents were apparently given to her in a stack by Eileen, and after they were completed were "checked" by Eileen and Ong. In fact it seems that Ong went through "one whole stack" that was compiled to "make sure that nothing is missed out", and was "prepared for WDA, in case they want to check" [\[note: 57\]](#)_.

Koh's evidence

49 Koh testified that he first met Ong at an ITC course preview on 22 July 2006. He enrolled for and attended a course from 16 August 2006 until 27 January 2007. Koh knew about an SDF subsidy because he had seen an advertisement about it in the papers. He said that Ong did not mention the SDF subsidy during the preview, nor talk about the pre-conditions of getting the SDF subsidy. Koh said that he was simply under the impression that "as long as there was a company, then [he] could apply for this subsidy [\[note: 58\]](#)_"_. Hence he filled the name of a friend's company in his enrolment form [\[note: 59\]](#)_.

50 Koh had been employed intermittently in the massage industry, but was not employed at the time when he registered for the ITC course. At the introduction talk, he heard Ong telling other students that in order to be eligible for the SDF subsidy, they could go online and register with a company. As Koh did not know how to operate computers, he did not go online, and when he handed his form to Eileen he told her that he did not meet the employment requirement. Eileen then told him that she would look around to see if any other student was able to use his company to apply on Koh's behalf [\[note: 60\]](#)_. A few days before the commencement of the course, Eileen called Koh and referred him to Jane, saying that she could "use her company to help [Koh] apply". Eileen gave Koh Jane's

telephone number, and told Koh to bring a sum of \$279 as "stamp duty" [\[note: 61\]](#). Koh visited WFL's premises and met Jane, who took down his particulars and said she would help him apply as soon as possible [\[note: 62\]](#). Koh then paid Jane the \$279.

51 Koh was clear that he had never been in WFL's employ. He said that he was never paid salary by WFL and had never seen the payslips produced in evidence before. He did not understand why, according to the payslips and his CPF statements, WFL had contributed \$26 per month to his CPF, remarking that "because [he had] never worked for [WFL], how could it have paid CPF for [him]?" [\[note: 63\]](#). During examination-in-chief, Koh testified that he found out about the CPF contributions only after he had completed the course in late 2007. Puzzled, he had visited the WDA office to enquire, and then found out that it was WFL that had been making the contributions. About two weeks after Koh's WDA visit, Jane called Koh numerous times regarding an "urgent matter" and kept reminding him that if WDA asked, he must say that he was working for her [\[note: 64\]](#). Then in early 2008, Koh received a phone call from Eileen, who wanted to know whether WDA had called him. She instructed Koh that if WDA were to call him, he must tell them that he was working for Jane. Eileen told Koh that this was part of WDA's routine investigation [\[note: 65\]](#).

Ng's evidence

52 Ng enrolled for and attended two successive ITC courses - one in 2006, which is not the subject of the charge ("the 2006 course") and another from 30 March 2007 till 15 January 2008 ("the 2007 course"). He enrolled for the courses at two separate ITC previews conducted by Ong. Ng said that he found out about the possibility of obtaining an SDF subsidy from the newspapers, and that he was aware that one of these conditions was that he be employed in a company in the relevant industry [\[note: 66\]](#).

53 For the 2006 course, Ong told Ng that he would "help [him] to get the necessary arrangement" [\[note: 67\]](#) to obtain the SDF subsidy, but that Ng must pay ten per cent of the fees. Ng duly paid \$250 to ITC, and was then referred to a clinic in Tanjong Pagar where he met one Dr Lee [\[note: 68\]](#). Dr Lee took down Ng's details from Ng's identity card, and told Ng that he would be Ng's sponsor. Ng paid Lee \$200 for "administrative fees" upon Dr Lee's instruction. It was Ng's evidence that Ong gave him the impression that his eligibility for the SDF subsidy "would be taken care of", and that after his visit to Dr Lee, he was happy that Ong had "fulfilled what he said" [\[note: 69\]](#).

54 For the 2007 course, Ng again issued to ITC a cheque for \$525 representing ten per cent of the course fees, and a further cheque for \$480 for "admin fees". Ng's cheque book was produced in evidence [\[note: 70\]](#) and Ng confirmed that the cheques issued on 15 March 2007 and 7 June 2007 represented these two payments respectively. Ng recalled receiving a receipt for his payment of \$525, which he had misplaced [\[note: 71\]](#). Based on his previous experience, Ng then assumed that a sponsor would be duly provided. Ng testified that he did not realise that his sponsor was WFL, and had never heard from them, until after the completion of the 2007 course [\[note: 72\]](#). On the night before a WDA audit was carried out, the lady whom Ng now knows to be Jane apparently called Ng and told him that she was his sponsor for the 2007 course. She then asked him to attend a meeting at WFL's premises the following morning because a WDA audit was going to be conducted. Ng recalled that Jane, Ong and a few of Ng's other classmates on the ITC course were at the meeting. Ng had poor recollection of the identities of these other trainees [\[note: 73\]](#), but when the defence put to him that Ong was not in attendance, he maintained that he was sure that Ong was at WFL on the day of

Ng's visit, and had been there before Ng arrived [\[note: 74\]](#). Ng also maintained that this was the first time that he had met Jane, although he was shown a group photograph of a graduation ceremony on 23 June 2007 with both Ng and Jane in the photo [\[note: 75\]](#). Ng said that before the arrival of the WDA auditors [\[note: 76\]](#), Ong told Ng to write "some voucher and receipt of money in a normal receipt book" [\[note: 77\]](#) telling him that this was for a commission payment that Ng had received in his position as a consultant for WFL. Ng did not remember the sums he was asked to write, and said that he did as he was told even though he had never received any money, nor referred any business to WFL. It is abundantly clear that like Koh, Ng never worked for WFL [\[note: 78\]](#).

55 On the issue of CPF, Ng said that it was his wife who checked his CPF account from time to time. He recalled her saying that there were employer contributions to his CPF account during the duration of the 2007 course, but he had thought nothing of it except that it had something to do with his SDF subsidy eligibility [\[note: 79\]](#). When questioned about Jane's involvement in the CPF payment, Ng maintained that he had never known who was making these contributions, until Jane explained it to him on the day of the investigation [\[note: 80\]](#).

Analysis of the evidence

56 Like Vasanthi, Koh appeared to me to have a clear recollection of the events, and was lucid in his responses. He was fairly certain of what he could and could not remember, for instance when questioned about the date on which he had paid certain sums of money [\[note: 81\]](#), the fact that he had only met Jane once [\[note: 82\]](#), and the curious use of the term "stamp duty" which he maintained throughout as originating from Eileen when she first described the payment that he was to make to Jane on his first and only visit to WFL [\[note: 83\]](#). Although the DJ was suspicious of Koh's evidence concerning "stamp duty" as this term did not feature in any of the other trainees' testimonies, I do not share this concern as it is entirely possible that this was simply a nebulous term used by Ong or Eileen to describe a sum the purpose of which they would rather not reveal to Koh. As such, I am not inclined to view Koh's evidence with the same skepticism as evidence from trainees who were much more tentative and unsure in their responses.

57 Ng's evidence was much less helpful than Koh's, as he did not answer many questions directly, did not remember many events, and appeared to rely heavily on his wife for all his personal accounting and CPF matters. However, there were a number of other similarities between Koh and Ng's experiences which I found important to consider. First, like Koh, Ng was told to pay ten per cent of his course fees and never mentioned obtaining a reimbursement from either of his sponsors. Ong led him to believe that the unsubsidised portion of the fees was his to bear. Second, both Koh and Ng were told at their respective ITC previews by Ong and/or Eileen, that sponsors would be "arranged" for them so that they could obtain an SDF subsidy. There was no mention of an employment relationship. Ng in particular appeared to have a simple-minded understanding of the events, but it was telling that throughout the questioning he maintained his great faith in the fact that Ong had arranged everything for him, and that Jane's role in creating the impression of his employment was all part of that plan [\[note: 84\]](#). Third, both Koh and Ng had only met Jane once, and did not have a meaningful relationship let alone anything akin to an employment relationship with WFL. Fourth, according to both Koh and Ng's evidence, paperwork was generated by WFL upon Ong's instruction giving the false impression that Koh and Ng had received money from WFL when they both testified that they had not. For Ng, this took the form of the payment vouchers and receipt book he was asked to sign, whereas for Koh, it was the payslips which he said he had never seen. This was confirmed by the documentary evidence, and by Jane's testimony that she had never paid Koh or Ng

and that the documents were only necessary paperwork. Finally, both Koh and Ng stated that they paid additional sums over and above their course fees - Koh to Jane directly, and Ng to Eileen in 2007. This corroborates Jane's evidence that she collected Koh's CPF money directly from him when he visited WFL's premises, but collected Ng's CPF money from Eileen [\[note: 85\]](#). Jane also testified that unlike Koh, Ng did not come to her office personally to make payment [\[note: 86\]](#). Finally, Koh and Ng were both contacted by Jane *after* the completion of their course and told that she was their sponsor. There was the sense that this arrangement was being made urgently, in preparation for an impending WDA investigation.

58 Notably, Ng underwent two successive ITC courses and was referred to a different "sponsor" each time. There was no indication that ITC had, when Ng enrolled for the 2007 course, checked on whether Ng was still "employed" by Dr Lee whom Ong had previously referred Ng to during the 2006 course. Instead, Jane was simply assigned as his sponsor. This strongly suggests that Ong did not refer Ng to each sponsor intending that they set up a *bona fide* employment relationship, but simply intended for the relationship of expediency to last for the duration of the course.

59 I find that the oral and documentary evidence before me is overwhelmingly indicative of Ong's involvement in the creation of WFL's fictional employment relationship with Koh and Ng. While there were some inconsistencies in Jane's and the two trainees' evidence on questions of dates, this in my view is not sufficient to change the overall picture of a fiction actively directed by Ong, rather than a private scheme between Jane and the two trainees.

Summary

60 I hence find that Ong is guilty of cheating under s 420 of the Penal Code in respect the 2nd charge, and attempted cheating under s 420 read with s 511 of the Penal Code with respect to the 19th and 33rd charges.

61 In so finding, I am aware of the reservations that the DJ had with regards to Mimosa's and Jane's credibility as accomplices. However, by this reasoning the court should not have been any less circumspect with regard to Eileen's evidence because she too stood as an accomplice and was just as much, if not more, complicit in Ong's schemes. Rather, I note that the presumption that an accomplice giving evidence against an accused is unworthy of credit does not arise automatically, and but that:

Whether or not the court should believe the evidence of the accomplice would depend on all the circumstances of the case and the evidence must be tested against the objective facts as well as the inherent probabilities and improbabilities; but where the court did not discern any attempt by the accomplice materially to minimise his own involvement or exaggerate that of the Respondent and his evidence was found to be consistent as a whole and reliable on a review of the whole evidence, there was no reason why the evidence should be treated as unreliable. (*Jimina Jacee d/o C D Athanasias v Public Prosecutor* [1999] 3 SLR(R) 826 *per* Yong Pung How CJ at [23]).

62 The DJ was concerned that Mimosa and Jane had an interest in boosting their local workforce and did not simply "sponsor" the trainees for altruistic reasons [\[note: 87\]](#). He pointed out that Mimosa and Jane were "guarded and not entirely forthcoming" especially when questioned about their multi-level marketing business and ADS spa operations respectively. While I agree with this finding, the fact that Mimosa and Jane stood to benefit from the scheme does not then remove the possibility that Ong was also implicated. I also agree with the DJ's finding that the proprietors of the three Applicant

Companies were not “naive and compliant individuals” who simply followed the instructions of Ong as the mastermind [\[note: 88\]](#). That said, the fact that Mimosa and Jane were clearly not ignorant does not assist Ong’s case much, because the question is not whether Ong misled Mimosa and Jane into unknowing compliance with his scheme, but whether he knew that such a scheme was being carried out. It is clear that both Mimosa and Jane were well aware of the rules that they were flouting as they admitted that they knew the SDF subsidy criteria, having previously been subsidised students themselves, and having legitimately sponsored other employees of their companies for other SDF-approved courses before. They would clearly be culpable regardless of Ong’s role. There is thus little incentive for them to further incriminate Ong in the hope that blame would be averted from themselves. Their evidence should hence not be immediately taken as self-serving and unreliable.

63 I finally turn to consider the evidence of Choo and that of the five trainees associated with his company, CLSC.

Choo’s evidence

64 Like Mimosa and Jane, Choo testified that he had been approached by Ong for his help to enrol trainees on ITC courses [\[note: 89\]](#). However, Choo’s evidence differed slightly from that of Mimosa and Jane. Unlike them, Choo appeared to have regarded the five students whom he “sponsored” as his employees, even though he stated that the students were never on his payroll [\[note: 90\]](#). Choo testified that by “help”, Ong meant “to employ them”; and that by “employ”, Ong meant that Choo had to “pay their CPF” and also to have the students “come to [his] clinic and work as part-time” and to “engage the students as [his] employee[s]” [\[note: 91\]](#). Choo testified that he knew about a “place and train” scheme, and that he had intended to help the students obtain subsidised training so as to enlarge a pool of Ayurvedic students whom he could call for work if he needed [\[note: 92\]](#), in accordance with his plans to expand his business [\[note: 93\]](#). While the students “trained” under the “place and train” scheme, he regarded them as his employees even though he did not pay them a salary and they never worked for him:

Q When [these trainees] come to you and you accepted them, and started to contribute their CPF, would you say that by so doing you are creating an employer-employee relationship between your clinic and these five individuals?

A Yes. [\[note: 94\]](#)

...

Q Would it be correct that one of your plans in headhunting is to headhunt them from ITC?

A Not only ITC ... I always want to get new people into my business. ITC is just one of the source.

Q So your headhunting plan would be that you allow yourself to sponsor potential staff?

A I don’t 100% agree. Our headhunting including everything, including that one (sponsorship), including [our] network, introduction, my students, anything that work. Even we get a worker, doesn’t mean that worker can work for us. There is a high percentage of – deduct the person that can’t work. [\[note: 95\]](#)

....

Q With regards to these applications, are you able to state that these five people sponsored by Choo Led Sin Clinic, whether you have or have no intention of giving them a permanent place in your workforce?

A As a business owner, of course we hope to engage the more worker the better. But my plan failed because we can't take over the other shop.

Q I am talking at the time March 2006. In your mind, was it your intention to sponsor them and then, after they have been trained and become available as staff, to engage them?

A Yes, not 100% correct, but it is part of my plan. I may think of choosing only one or two, but not everyone. [\[note: 96\]](#)

Evidence of the CLSC trainees

65 Turning to the evidence of the trainees associated with CLSC, it is notable that Kang and Ler regarded themselves as CLSC's employees. Kang had met Ong at an ITC course preview on 27 March 2006, where Ong had apparently told the whole group of attendees that to qualify for an SDF subsidy, they "have to be in the industry". After the preview, Kang told Ong that she was unemployed, whereupon he told her to go to CLSC. Although he did not tell her what to do there, Kang interpreted his referral as an employment referral [\[note: 97\]](#):

Q Did Mr Ong tell you, "go and see Mr Choo because he can become your employer" - did he say words to that effect?

A I can't recall he saying that.

Q If you cannot recall what he told you, when Ong asked you to go and see Choo Led Sin, what did you think he wanted you to see Choo Led Sin about?

A Because I told Mr Ong that I was not employed and I was also not from this industry, when he referred Mr Choo to me, I assumed or believed that my going to see Mr Choo was (1) he is in this industry, (2) he will employ me.

Q So the reference to Choo Led Sin in your mind was to ask you to see a potential employer?

A Yes.

66 At CLSC, Choo took down Kang's identity card details, and talked to Kang for ten minutes, telling Kang that "when he needs [her] he will call [her]". Kang took this to mean that Choo was her employer [\[note: 98\]](#). This is why she was not surprised when she saw in her CPF statement that Choo had made monthly contributions of \$26 from March until June 2006. However, Kang never worked for Choo. She said that if Choo had ever called her up to work, she would gladly do so even though the salary (as inferred from the CPF contribution) would be minimal [\[note: 99\]](#). When Kang subsequently signed up for the ITC level two course in 2007 and Jane offered to sponsor her, Kang then regarded Jane as her employer just as she had regarded Choo before [\[note: 100\]](#). She assumed that CLSC had stopped being her employer after Choo stopped the CPF contributions once the level one course ended [\[note: 101\]](#). Kang testified that Ong had never taught her to enter a fictitious arrangement with

CLSC, and that she never told Ong about the arrangement she made with CLSC or Jane [\[note: 102\]](#).

67 Ler's story was very similar to Kang's. She too said that Ong had informed the participants at the preview that they had to be in "the same line" in order to get sponsorship. She told Ong that she was unemployed and asked him to refer her to a sponsor, whereupon he referred her to CLSC. Unlike Kang, Ler said that Ong had told her to "go there for interview". However, as was the case with Kang, Choo took down Ler's name and identity card number when she visited CLSC, and told her that he would contact her if he needed her to work for him [\[note: 103\]](#). Like Kang, Ler assumed that this made Choo her employer and hence was not surprised when she later saw that Choo had contributed to her CPF [\[note: 104\]](#). Both Kang and Ler had a very informal view of employment - Ler did not consider how long she was obliged to respond to Choo's calls to work for him, and said that if he did not call her after a few months she would simply find another job without waiting for Choo to "fire" her [\[note: 105\]](#). Choo did not in fact ever call Ler to work for him [\[note: 106\]](#), but Ler remained under the impression that she was his employee because he sponsored her [\[note: 107\]](#). In addition, Ler further testified that she had gone back to ITC and told Ong that she had found an employer. Although she did not tell him whom it was specifically, she said that it was understood that it was CLSC since Ong had told her to go there for an interview [\[note: 108\]](#). Like Kang, Ler regarded herself as falling under the government's "place and train" scheme.

68 The other trainees, Ang, Yau and Amie, had different experiences, all related in a somewhat confused and unsure manner. Yau claimed that Ong had never told her to go to CLSC's premises and had never even heard of CLSC before, while Amie said that she visited CLSC once but did not meet Choo. This was contradicted by Choo's evidence that he had met all the five trainees and taken down their identity card details in the manner testified by Kang and Ler. Both Yau and Amie were certain that they had not worked as employees of CLSC. Ang's evidence was that Ong told her that he could help her get funding by finding her a sponsor, and had told her, Ler and Amie at the same meeting to "register" at CLSC, giving them each a card with CLSC's name and address on it. Ang could not remember whether the word "interview", as used by Ler, was used with her, but she stated that she did not take the word "sponsor" to mean that CLSC would be her employer [\[note: 109\]](#). However, when it was put to Ang in cross-examination that Ong had referred Ang to CLSC for the purpose of letting her interview there for part-time employment, Ang agreed [\[note: 110\]](#).

69 In light of Choo's interpretation of his sponsorship of the trainees as being equivalent to employment, his detailed explanation of his desire to train and hire trainees in order to expand his business, and the trainees' loose and informal view of what constituted "employment" in the massage industry, it seems that the absence of a true employment relationship between CLSC and its five trainees was less manifest than it was in the case of ADS and WFL. It is possible that the illusory employment relationship, supported by the CPF payments, was entirely sustained by Choo without Ong's knowledge. Oral and documentary evidence indicating Ong's orchestration of questionable events such as recces to the purported employer's premises, urgent phone calls anticipating WDA questioning, or meetings to sign false documentation, which had been present in the cases of Koh, Ng and Vasanthi, were notably absent in the case of the five CLSC trainees.

70 The only evidence against Ong with respect to his knowledge of the false employment relationship, was hence Choo's evidence that it was *Ong's idea* for Choo to pay the students' CPF in order to create the impression of an employment relationship, and that it was Ong who stipulated the amount and duration for such payment [\[note: 111\]](#). However, I noted that not all of the trainees associated with CLSC mentioned that Ong instructed them to pay sums to CLSC for CPF:

(a) Only Amie gave a clear statement that Ong told her to pay \$250 for CPF when she went to CLSC [\[note: 112\]](#). She paid this sum to the receptionist, who did not question her about its purpose, and she was given a receipt [\[note: 113\]](#) which she has since misplaced [\[note: 114\]](#).

(b) Ang initially testified that she had paid \$200 to Choo in accordance with Ong's instructions to her to bring this sum along for "something to do with CPF" [\[note: 115\]](#). However, when challenged in cross-examination, Ang withdrew her statement that Ong had told her to bring the \$200, and said that she could not remember [\[note: 116\]](#).

(c) Ler, Kang and Yau did not mention anything about being asked to pay CLSC for their CPF. Ler simply said that CLSC contributed sums to her CPF account because CLSC was her employer [\[note: 117\]](#), and that she found out about this by looking at her CPF statement. Yau denied ever hearing about or visiting CLSC at all.

71 In my view, the evidence of the trainees was insufficiently certain to put it beyond reasonable doubt that Ong did in fact know about the CPF arrangement between CLSC and the trainees, which was devised to sustain an illusory employment relationship. The evidence of Ang and Yau was particularly unhelpful as their responses to the questions asked during the trial revealed the poor level of recollection which the DJ had warned of at [81] of his GD. Yau did not know nor could she recall the answers to most of the questions she was asked in court including whether she had ever visited CLSC [\[note: 118\]](#), whether she had paid course fees to ITC [\[note: 119\]](#), and whether any CPF contributions had been paid into her account during the material times [\[note: 120\]](#). As for Ang, she was vulnerable to the suggestions put to her during cross-examination [\[note: 121\]](#), and changed her answers when put under pressure.

Summary

72 In sum, I find that the evidence before me has not put it beyond reasonable doubt that Ong knew that Kang, Ler, Yau, Ang and Amie were never genuinely employed by CLSC. The existence of Ong's culpable knowledge in the case of these five trainees all turned on the strength of their oral evidence, which I found not to be as consistent and coherent as that of Vasanthi, Koh and Ng. Besides the scattered allegations of being asked to pay CPF money to CLSC, there was neither mention of unusual occurrences nor production of corroborating documentary evidence to paint a clear picture of Ong directing and sustaining the sham employment relationship, as had been the case with Vasanthi, Koh and Ng. I hence find that the DJ's decision with respect to the 5th, 6th, 41st, 42nd and 43rd charges, should not be disturbed.

73 I therefore convict Ong in respect the 2nd, 19th and 33rd charges. I will hear counsel on the issue of sentence.

[\[note: 1\]](#) see clause 2.1(b) 2004 Terms and Conditions (for Training Providers Under Approved-In-Principle (AIP) Scheme, at Record of Proceedings ("RP") vol 2 p 1069

[\[note: 2\]](#) see clause 2.2(c), *ibid*; and clause 5.2(e) of the 2007 Agreement at RP vol 2 p 1076

[\[note: 3\]](#) D5 at RP vol 2 p 1333

[\[note: 4\]](#) see RP vol 1 p 610

[\[note: 5\]](#) see grounds of decision ("GD") at [37]

[\[note: 6\]](#) see GD at [32]-[33]

[\[note: 7\]](#) see GD at [34]-[36]

[\[note: 8\]](#) see GD at [81]

[\[note: 9\]](#) see GD at [50]

[\[note: 10\]](#) see RP vol 2 at pp 841-843

[\[note: 11\]](#) see respondent's submission ("RS") dated 22 May 2012 at para 12

[\[note: 12\]](#) see RP vol 1 at p 95

[\[note: 13\]](#) see RP vol 1 at p 91

[\[note: 14\]](#) see RP vol 1 at p 99

[\[note: 15\]](#) P14 at RP vol 2 p 1110

[\[note: 16\]](#) see RP vol 1 at p 101

[\[note: 17\]](#) see RP vol 1 at p 114

[\[note: 18\]](#) see RP vol 1 at p 98

[\[note: 19\]](#) see RP vol 1 at p 98

[\[note: 20\]](#) see RP vol 1 at p 95

[\[note: 21\]](#) see RP vol 1 at p 114

[\[note: 22\]](#) P15 at RP vol 2 pg 1115

[\[note: 23\]](#) The DJ doubted Vasanthi's credibility because of the inconsistency in dates. He preferred evidence led from Ong as well as an ex-employee of ITC, one Zabariah Binte Hariff Clare ("Clare"), both of whom testified that Vasanthi had attended an ITC course preview and enrolled for the course *before* going to Australia (at GD [78]-[80]), which corroborates the fact that Vasanthi's ITC enrolment form is dated 10 November 2007—a time which she says she was still in Australia. Vasanthi claims that she backdated her course enrolment form to 10 November 2007 upon instructions from ITC that this was the procedure.

[\[note: 24\]](#) see RP vol 1 at p 145

[\[note: 25\]](#) see RP vol 1 at p145

[\[note: 26\]](#) see RP vol 1 at p 147

[\[note: 27\]](#) see RP vol 1 at p 148

[\[note: 28\]](#) see RP vol 1 at p 150

[\[note: 29\]](#) see RP vol 1 at p 150

[\[note: 30\]](#) see RP vol 1 at p 141

[\[note: 31\]](#) P16 at RP vol 2 p 1116

[\[note: 32\]](#) P17 at RP vol 2 p 1117

[\[note: 33\]](#) see RP vol 1 at p 145

[\[note: 34\]](#) P18 at RP vol 2 p 1118

[\[note: 35\]](#) see RP vol 1 at p 710

[\[note: 36\]](#) see RP vol 1 at p 714

[\[note: 37\]](#) see RP vol 1 at p 715

[\[note: 38\]](#) see RP vol 1 at p 155

[\[note: 39\]](#) see RP vol 1 at p 170

[\[note: 40\]](#) see RP vol 1 at p 173

[\[note: 41\]](#) see RP vol 1 at p 174

[\[note: 42\]](#) see RP vol 1 at pp 673, 716

[\[note: 43\]](#) see RP vol 1 at pp 674, 717

[\[note: 44\]](#) see RP vol 1 at p 177

[\[note: 45\]](#) see RP vol 1 at p 181

[\[note: 46\]](#) P22 at RP vol 2 at p 1123

[\[note: 47\]](#) see RP vol 1 at p 184

[\[note: 48\]](#) see RP vol 1 at p 185

[\[note: 49\]](#) see RP vol 1 at p 240

[\[note: 50\]](#) see RP vol 1 at p 186, 190

[\[note: 51\]](#) P25 at RP vol 2 p 1130

[\[note: 52\]](#) P20 at RP vol 2 p 1121

[\[note: 53\]](#) P21 at RP vol 2 p 1122

[\[note: 54\]](#) P30 at RP vol 2 p 1141 and P26 at RP vol 2 p 1131

[\[note: 55\]](#) see RP vol 1 at pp 183,192

[\[note: 56\]](#) see RP vol 1 at p 184

[\[note: 57\]](#) see RP vol 1 at p 189

[\[note: 58\]](#) See RP Vol 1 at p 237

[\[note: 59\]](#) P29 at RP vol 2 at p1140

[\[note: 60\]](#) See RP Vol 1 at pp 240 and 264

[\[note: 61\]](#) See RP Vol 1 at pp 240, 259, 265, 277-278

[\[note: 62\]](#) see RP vol 1 at p 240

[\[note: 63\]](#) see RP vol 1 at pp 245

[\[note: 64\]](#) see RP vol 1 at p 246

[\[note: 65\]](#) see RP vol 1 at p 247

[\[note: 66\]](#) see RP vol 1 at p 309

[\[note: 67\]](#) see RP vol 1 at p 286

[\[note: 68\]](#) see RP vol 1 at p 290

[\[note: 69\]](#) see RP vol 1 at p 310

[\[note: 70\]](#) P34 at RP vol 2 p 1146 and P35 at RP vol 2 p 1147

[\[note: 71\]](#) see RP vol 1 at p 324

[\[note: 72\]](#) see RP vol 1 at p 295

[\[note: 73\]](#) see RP vol 1 at pp 318-319

[\[note: 74\]](#) see RP vol 1 at p 329. But Kang, who claimed to also have attended the same meeting at WFL on the day of the investigation, testified that she did not see Ong there, and that she had not been asked to sign any payslips or payment vouchers (see RP vol 1 at p 427). The DJ preferred Kang's evidence (see GD at [76]).

[\[note: 75\]](#) see RP vol 1 at p 317

[\[note: 76\]](#) see RP vol 1 at p 330

[\[note: 77\]](#) see RP vol 1 at p 298

[\[note: 78\]](#) see RP vol 1 at p 300

[\[note: 79\]](#) See RP Vol 1 at p 323

[\[note: 80\]](#) See RP Vol 1 at p 334

[\[note: 81\]](#) See RP Vol 1 at p 243

[\[note: 82\]](#) See RP Vol 1 at p 244

[\[note: 83\]](#) see RP vol 1 at p 260

[\[note: 84\]](#) see RP vol 1 at pp 333-334

[\[note: 85\]](#) see RP vol 1 at p 219

[\[note: 86\]](#) see RP vol 1 at p 220

[\[note: 87\]](#) GD at [51]

[\[note: 88\]](#) GD at [50]

[\[note: 89\]](#) see RP vol 1 at p 341

[\[note: 90\]](#) see RP vol 1 at p 340

[\[note: 91\]](#) see RP vol 1 at pp 341-342 and 343

[\[note: 92\]](#) see RP vol 1 at pp 373-377

[\[note: 93\]](#) see RP vol 1 at pp 372-375

[\[note: 94\]](#) see RP vol 1 at p 372

[\[note: 95\]](#) See RP vol 1 at p 374

[\[note: 96\]](#) see RP vol 1 at p 377

[\[note: 97\]](#) see RP vol 1 at p 413

[\[note: 98\]](#) see RP vol 1 at p 415

[\[note: 99\]](#) see RP vol 1 at p 418

[\[note: 100\]](#) see RP vol 1 at pp 419-421

[\[note: 101\]](#) see RP vol 1 at p 433

[\[note: 102\]](#) see RP vol 1 at p 429

[\[note: 103\]](#) see RP vol 1 at pp 440 and 454

[\[note: 104\]](#) see RP vol 1 at pp 450 and 456

[\[note: 105\]](#) see RP vol 1 at p 455

[\[note: 106\]](#) see RP vol 1 at p 445

[\[note: 107\]](#) see RP vol 1 at p 446

[\[note: 108\]](#) see RP vol 1 at p 447

[\[note: 109\]](#) see RP vol 1 at p 490

[\[note: 110\]](#) see RP vol 1 at p 498

[\[note: 111\]](#) see RP vol 1 at pp 348 and 390

[\[note: 112\]](#) see RP vol 1 at p 570

[\[note: 113\]](#) see RP vol 1 at p 532

[\[note: 114\]](#) see RP vol 1 at p 559. However it appeared that there was some discrepancy regarding the date on which this CPF payment to CLSC was purportedly made. Amie testified that it occurred on her first and only visit to CLSC, about *two weeks after the commencement of her ITC course* on 27 March 2006. The defence then produced in evidence a computer-generated government letter to

CLSC dated 28 March 2006, bearing Amie's name. The date of the letter contradicts Amie's evidence that her first contact with CLSC only occurred in mid-April 2006, when she went there to pay what she claimed she was told was money for CPF—see RP vol 1 at p 571

[\[note: 115\]](#) see RP vol 1 at p 483

[\[note: 116\]](#) see RP vol 1 at p 487

[\[note: 117\]](#) see RP vol 1 at p 450

[\[note: 118\]](#) see RP vol 1 at pp 521

[\[note: 119\]](#) see RP vol 1 at p 520

[\[note: 120\]](#) see RP vol 1 at p 514

[\[note: 121\]](#) see RP vol 1 at pp 498-499

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