

HONG KONG / JUDGMENT

HKSAR v. CHAN WAI HO

[2022] HKCFI 294**COURT**

Court of First Instance

DECIDED

20 January 2022

CASE / FILE NUMBER

HCMA127/2021

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bjbj Appellant

Before: Hon Campbell-Moffat J in Court Date of Hearing: 20 January 2022 Date of Decision: 20 January 2022 DECISION

Introduction

The appellant was convicted after trial before Deputy Magistrate Chan Pui man on 11 February 2021, of one count of attempting to obtain property by deception contrary to s17(1) of the Theft Ordinance, Cap 210, and s159G of the Crimes Ordinance, Cap

200. On the same date, the appellant was sentenced to a fine in the sum of \$15,000. By his Notice of Appeal dated 25 February 2021, he sought to appeal that conviction. On 15 November 2021 this Court dismissed his appeal. The applicant now seeks a Certificate to appeal to the Court of Final Appeal on a point of law. Appeal Under s30 of the Hong Kong Court of Final Appeal Ordinance, Cap 484 (the HKCFAO), the Court of Final Appeal () has jurisdiction to hear appeals in criminal matters. An appeal lies to it from a final decision of the Court of Appeal and Court of First Instance). In order to appeal to the CFA from the CFI, an appellant requires leave to appeal from the relevant Court. Section 32(2) of the HKCFAO, states: Leave to appeal shall not be granted unless it is certified by the Court of Appeal or the Court of First Instance, as the case may be, that a point of law of great and general importance is involved in the decision or it is shown that substantial and grave injustice has been done. By his Notice of Motion the applicant submitted that the point of law he wishes to have considered is: Does the Court have the judicial notice of whether the conclusion of a third party using a credit card to make purchase with the authorization and knowledge of the card owner is one of a criminal offence of obtaining property by deception The applicant appeared in person. There were no grounds of appeal or any written submissions. The facts of the case have been outlined in the decision of this court dated 19 November 2021, and will not be repeated here. However, in an effort to help the applicant clarify his argument,

the Court was assisted by Ms Chiu on behalf of the respondent who confirmed the following facts:

- i) The charge for which the applicant was found guilty was one of attempting to obtain property by deception. ii) This was carried out by means of a credit card in the name of the applicant's sister. iii) The applicant approached a salesperson to purchase goods and proffered the card for the purchase. iv) The salesperson asked him if it was his card and he answered that it was.
- v) The salesperson asked him if the name on the card was his and he said it was. vi) The card was used by the salesperson to make the purchase and a receipt produced for the applicant to sign, which he did. vii) When the salesperson queried the signature, he asked the applicant for his HKID, at which point the applicant asked for the return of the card. The applicant accepted that he had lied to the salesperson twice when confirming ownership of the card and the name upon it. He also accepted that he had signed the back of the card himself and that he knew when he signed the card that the card belonged to his sister and that he had at no time told the salesperson of the true position which, according to the applicant, was that he had the authority of his sister to use the card. It was clear from these admissions that the applicant had carried out three separate acts which could, individually, have amounted to attempting to obtain property by deception. Having clarified with the applicant, the acts which amounted to the offence, the applicant maintained, as he did below, that he had his sister's authority to use the card. He suggested he had been in possession of it for four years, although this was not raised in trial or on appeal and that he had signed the back of the card at some other point in time but could not remember when. Leaving aside the fact that when first approached by the police, initially the sister had said she had given no such authority, the applicant had sought to deceive the salesperson when making the purchase. Had the salesperson known that the applicant was using his sister's card, he would have refused the sale. Had the salesperson known that the name on the card was not the name of the applicant, he would have refused the sale and had he known that the signature on the reverse was not that of the sister but the signature of the applicant, he would have refused to sell him the goods. There was a clear and admitted operative deception upon the salesperson. The issue before the court was not that of authorization by the card holder but the fact the applicant deceived the salesperson as to his authority to use the card. The oral submissions of the applicant indicated that he was unable to grasp the criminality of his acts. It is most unfortunate that those representing him did not explain this to him as he found it difficult to accept that his intentional lies founded a basis for criminal liability. The arguments put forward by the applicant in the notice of motion and his submissions do not constitute viable grounds for granting leave to appeal to the Court of Final Appeal. They do not involve a point of law of great and general importance. As the statutory requirements for giving leave to appeal are not met, the intended appeal to the Court of Final Appeal has no prospect of success. This application for a certificate for leave to appeal to the Court of Final Appeal on a point of law of great and general importance is refused. There will be no order as to costs. (A P Campbell Moffat) Judge of the Court of First

Instance High Court Ms Samantha Chiu, SPP of the Department of Justice, for the
respondent The appellant appeared in person S31 HKCFAO - PAGE * MERGEFORMAT - A B C
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Prepared on 27 October 2026 · Esheria