

HONG KONG / JUDGMENT

HKSAR v. CHEUNG YUET

COURT

Court of First Instance

DECIDED

15 May 2007

CASE / FILE NUMBER

HCMA1097/2006

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bjbj HCMA1097/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 1097 OF 2006 (ON APPEAL FROM ESCC3324 OF 2006)

BETWEEN HKSAR Respondent and CHEUNG YUET (t was convicted after trial of one count of using a false instrument contrary to section 73 of the Crimes Ordinance, Cap.

200. She was sentenced to 80 hours community service. The appellant appeals against her conviction. THE CHARGE AUTONUMOUT The charge read Cheung Yuet, on 28 March 2006, at Rooms 701 703, AXA Centre, 151-159 Gloucester Road, Wanchai, in Hong Kong, you did use an instrument, namely an insurance application form in the name of Li Leung pun, which was, and which you knew or believed to be false, with the intention of inducing AXA China Region Insurance Company Limited to accept it as genuine, and by reason of so accepting it to do or not to do some act to the prejudice of AXA China Region Insurance Company Limited.

BACKGROUND

AUTONUMOUT The appellant, Catherine Cheung, was at the material time an insurance agent working for AXA. The prosecution case was that to meet her quota, she had filled out an insurance application for a man called Li Leung Pun () and submitted it to Chan Yim Wa her manager and supervisor () for onward processing. PW1 was however not privy to this application and although the information on the form was correct, the signatures on it were not his.

AUTONUMOUT To prove their case, the prosecution had called PW1, PW2 and DPC 34560 () who took two challenged records of interview (Exhibits P4 and P5) from the appellant. Their contents as summarised by the magistrate were as follows (extracted from the Statement of Findings with added paragraph number for easy reference) 8. P4 was what the defendant said when she was first cautioned with the offence, she simply said that she had forged the signature in the policy application form and sent it in to AXA Insurance.

9. In the second statement, P5, she had gone into more detail into how she had done that. And produced the details of that. She had said in respect of the medical insurance policy application form that is the material form in this case, that she forged the signature of Li Leung-bun. Also that the auto pay authorisation and all the information was completed by her. She also forged legal and personal signatures on the two spaces in the form for bank account holder as well. She said she had done that on 28 March at her office in AXA Centre.
10. And she also confirmed that she had submitted it on 28 March 2006, on the ground floor of the AXA Centre. She submitted a copy of the policy application. That accorded with the manager's evidence, that the form had appeared on her desk as part of the submission process. The defendant also went on to say that, in fact, this had not caused any loss to Mr Li because she, herself, had paid the premiums for the first two months.
11. As far as the bank auto-pay authorisation is concerned, it was in fact her bank account number that was on the document. She said the reason was she was under pressure - she could not meet the policy quota - and she had not intended to cheat anyone or cause any suffering. AUTONUMOUT The appellant did not give evidence on either the special or general issue. THE MAGISTRATE'S FINDINGS AUTONUMOUT In the end, the magistrate convicted the appellant as charged. This is how he explained it
12. The defendant has a clear record. She did not give any evidence herself. No adverse inference, obviously, can be drawn from that. But it did mean that I was only left with the prosecution evidence in this case to work on. Her case, effectively, was that the admissions should not have been put into evidence. She said they were not voluntarily given by her. And also, there had been certain breaches of the Secretary for Security's rules and directions in the accumulation of that evidence by the police officer.
13. I did consider that issue during the course of trial and I did rule the statements into evidence. And as far as the contentions of the defence were concerned, I rejected those contentions in respect of the record of interview. In determining these questions. I had the evidence of the officer who took the defendant's record of interview namely DPC 34560.
14. In making that decision, I found that the police officer concerned was a truthful and reliable witness as to what had happened that day. There was some - what might be described as, on the face of it - contradictory evidence about the timing with which he dealt with this defendant. His notebook had said that he had, in fact, started dealing with the defendant at 3.10 pm. But it is evident that he had been with her in the basement of the AXA Centre at 2.30 that afternoon - pm. He did not contradict that evidence. He said it was correct that he had met her at about 2.30. He explained the reason was because he had to confirm her identity as being the Catherine Cheung on the agent form. He questioned her about that, but he had not made any record of that questioning. He was cross-examined quite extensively upon this, it was put that he should have realised straightaway that Cheung, the lady he dealt with, was the Catherine Cheung, who was the agent.

15. I only had his evidence on this. The police officer satisfactorily resolved the apparent contradictions in the evidence that he gave. He was quite open about the question of timing and did not try to hide anything. He denied he had done anything to render the statement involuntary. I found that he was essentially reliable. He was reliable in saying that the statement was given voluntarily, that there was no threatening or intimidation involved, and that this statement must have been given voluntarily by this defendant.
16. There were, on the face of it, some breaches of the Secretary for Security's rules and directions. I think they can largely be described as technical matters. They are certainly not the kind of breaches that would warrant the exclusion of what was a voluntary statement. So I admitted the records of interview of the defendant into evidence.
17. Having admitted the statements into evidence, I then have to consider whether all the evidence together warranted a conviction of this defendant on this charge. The prosecution evidence was the evidence I had before me, especially what she said in the cautioned statement. On the face of it, the cautioned statements, records of interview contained a full admission of her not only falsifying the signatures, putting in the details the policy application forms and the bank authorisation direct debit forms as well.
18. What the defendant did in this case was fill in the forms. She never added her signature as agent. That was put in by the manager. It seems to me to be not a particularly relevant factor in this case, because she certainly submitted this application to AXA for processing. We know it was placed on the manager's desk obviously for that purpose, and the defendant admits she did this. So it is quite clear from this that the application was used, as it is required to be, in the offence of using a false instrument.
19. It is also clear from the evidence the defendant must have known the application to be false. And clearly it was intended that AXA accepted it as being a genuine document.
20. Now, by accepting this as a genuine document, AXA would obviously do a number of things. One of which is bring into being an insurance policy for a person who has not even applied for it. That would bring them certainly the risk of paying out on that insurance policy. They are also required to pay commission on that insurance policy. And it is clearly that by accepting it, they are put certainly at risk of some economic loss, they are prejudiced.
21. That being the case I found that the defendant should be convicted. THIS APPEAL AUTONUMOUT The appellant advances four grounds. Ground (4) AUTONUMOUT I begin with Ground
- (4) because this is the ground counsel chose to address me on first. It criticizes the magistrate for admitting into evidence Exhibits P4 and P5. It has various limbs. AUTONUMOUT The first limb concerns the time PW3 had spent talking with the appellant before arresting her and the contradictory evidence that he had given about it. AUTONUMOUT In the early part of his cross examination, he had said five minutes, counting from the time he met up with the appellant upon arriving at the AXA Centre, the time of the arrest itself being 3:15 p.m.. It

was only when he was shown the Centre's visitors book, which showed his entry time as 2:30 p.m., thus indicating a conversation of 45 minutes, that PW3 explained the need to have the appellant ascertain which agent in fact was responsible for filling out the application in question. AUTONUMOUT Counsel's point is that that could not have taken so long (reference both his written and oral submissions). The suggestion is that something improper must have taken place in the interim. AUTONUMOUT Having read the transcripts, I am satisfied that this point has no merit. It is PW3's evidence that albeit in possession of the application and other documents, he had never shown them to the appellant. His enquiry was simply whether she was the person who handled Mr's policy. There was nothing like a foregone conclusion either before or during the meeting and it was out of his control how long the appellant took to come up with an answer. I can easily imagine how she might have needed to look at her own records etc. AUTONUMOUT That of course still leaves the question as to why PW3's record or recollection of time was inaccurate. But that is one best left to the tribunal who had seen and heard him give evidence. Over all, the magistrate was entitled to his assessment of the situation as per paragraphs 14 and 15 of the Statement of Findings (above). AUTONUMOUT The second limb of this ground goes as follows the appellant had said nothing upon her arrest in the AXA Centre. However, Exhibit P4, taken 35 minutes later in Wanchai Police Station, sees PW3 refer to what he was doing as post recording a cautioned statement in its preamble. Along the same line, although the appellant made her first admission in Exhibit P4, a one liner stating that she had forged Mr's signature on the application and submitted it to AXA, Exhibit P5, made 4:25 p.m. on the same day, sees PW3 refer to it in a way that suggests it was made immediately after the appellant's arrest. AUTONUMOUT Counsel's point is that both these references are untrue, yet the appellant had still signed on the interviews. This shows how unreliable they are hence inadmissible. AUTONUMOUT In my judgment, these mistakes show PW3 to be a slovenly officer. It probably explains the problem under the first limb (see paragraph 13 above). But I do not see how the appellant could have been misled and/or prejudiced by these mistakes. She certainly did not give evidence to that effect. AUTONUMOUT As third limb, counsel argues that with the admission in Exhibit P4, P5 should not have been taken. He also complains that before Exhibit P5 was taken, a copy of P4 was not served on the appellant (fourth limb). AUTONUMOUT These, I understand, are the technical matters referred to in paragraph 16 of the Statement of Findings (above). Having considered everything in their full context, I agree that in this case, they are but technical breaches and the magistrate was entitled to disregard them. The important thing is the magistrate was sure the interviews were voluntarily given. Ground (1) AUTONUMOUT It is argued that since PW2 testified to have signed the application in question, the magistrate was wrong to conclude that the appellant's prior dealing with that form amounted to using a false document. In a word, the form did not become effective before PW2's signature. It was PW2 who used that form, not the appellant. AUTONUMOUT Below is how the magistrate summarized the relevant evidence

6. I heard from the manager of the defendant who was her supervisor, she had the application form, placed on her desk, and she had effectively passed it on for processing. She had affixed two signatures to it, the signature both of manager and of the agent. There was a declaration appended to those signatures, saying that she had asked certain questions of the applicant and had seen the proposed insured person. That is dated 28 March 2006. This witness declaration on the form could not have been true because she had never seen anyone associated with this form. AUTONUMOUT It puts in context what he said in paragraph 18 of the Statement of Findings (see above). AUTONUMOUT In my judgment, the magistrate was correct in that the act of submitting alone would amount to using. This is particularly the case since obviously the appellant knew the form would be processed, first by PW2, then others. (Why else would she put it in?) More fundamentally, a document is false if it tells a lie about itself. The lie here is that it purported to be an application by Mr Li. It even had Mr s forged signature as the proposed insured . It needed nothing and no one else to formalize its falsity. Ground (2) AUTONUMOUT Here counsel argues that having found PW2 to have appended a false signature and a false declaration to the application, the magistrate failed to consider if PW2 was a party to using a false document. This is important because if she was then the appellant could not be said to have intended to induce PW2 to accept the form as genuine, and there would be no offence. AUTONUMOUT This ground is not worth the paper on which it is written. The stated victim in this charge is AXA, not PW2. Ground (3) AUTONUMOUT Here the magistrate is said to have failed to detect an inconsistency between PW2 s evidence and the content of Exhibit P5, the appellant s second record of interview. And because of this failure, he had wrongly concluded that it was the appellant who placed the application on PW2 s desk. AUTONUMOUT What counsel means is that in answer
- (3) of Exhibit P5, the appellant claimed to have submitted the application concerned on the ground floor of the AXA Centre. This contradicts PW2 s evidence that she found the form on her desk. AUTONUMOUT fail to see the logic of this argument. There may not be evidence to cover every step of the movement of the form but reading what is available as a whole, the only irresistible inference must be that the appellant had submitted that form.

JUDGMENT

AUTONUMOUT The appeal is dismissed. (D. Pang) Deputy High Court Judge Ms Winnie Lam, GC of Department of Justice, for HKSAR Mr Philip Wong, instructed by Messrs Martin Law & Co., for the Appellant PAGE - PAGE A B C 1udk 1udk &`#\$ m_IP m_IP m_IP m_IP m_IP m_IP m_IP & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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