

HONG KONG / JUDGMENT

HKSAR v. HILL WONG

COURT

Court of Appeal

DECIDED

4 July 2007

CASE / FILE NUMBER

CACC329/2006

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bjbj @3Nu macro Applicant

Before: Hon Stuart-Moore VP, Stock JA and Beeson J Date of Hearing: 4 July 2007 Date of Judgment: 4 July 2007 J U D G M E N T Stuart-Moore, macrobutton nomacro VP (giving the judgment of the Court): On 29 June 2006, the applicant was convicted in the District Court of fraud, contrary to section 16A of the Theft Ordinance, Cap. 210, following a trial before Deputy Judge S Wong. The applicant was sentenced on 24 July 2006, after medical and psychiatric reports had been prepared, to 4 years imprisonment. This matter is listed before us as an application for leave to appeal against conviction and sentence. However, we were notified yesterday of the applicant s intention no longer to pursue his application in regard to conviction and he has confirmed this in today s proceedings. Accordingly, the application, so far as it concerns conviction, is dismissed. The particulars of the fraud charge alleged that the applicant, between 10 August 2005 and 18 August 2005: by deceit and with intent to defraud, namely, by falsely representing to Jiang Shang that:-

- (a) the said Hill Wong was able to raise a loan of \$50 million Hong Kong currency for the said Jiang Shang from one Joe Chan;
- (b) a sum of \$50 million Hong Kong currency, being the aforesaid loan, was deposited into the bank account of the said Jiang Shang maintained with the Industrial and Commercial Bank of China (Asia) Limited numbered 954511001291, thereby induced the said Jiang Shang to commit an act, namely, by parting [with] cash in the sum of \$2 million Hong Kong currency, which resulted in prejudice or a substantial risk of prejudice to the said Jiang Shang. (Appeal bundle p. 1) The fact that the prosecution s case was not particularly straightforward was to be expected. This was, in effect, a relatively complex confidence trick. It was alleged that a number of people combined to build up the victim s confidence about a particular scheme before persuading her to part with \$2 million. We are grateful to Ms Grace Chan on the respondent s behalf for her industry in providing a very clear summary of the evidence adduced at trial. Having been assured of its accuracy by Mr Mughal, we propose in large measure to adopt Ms Chan s summary as the evidential background to the case. Mr Willy

Wang Chen (PW2) and Ms Jiang Shang (PW1) were the representatives of a company called Hangzhou Aid Hospital Company Limited (the hospital) situated in Hangzhou on the Mainland. The hospital was in need of a loan of HK\$200 million. Through the introduction of a middleman, a Mr Hong Jianxin (Mr Hong), an arrangement was made for PW2 to meet the applicant in Shenzhen on 3 August 2005. At the applicant's request, PW2 provided background information about the hospital including information about the project and documentary proof of the hospital's bank account and financial position. The applicant made out that he was able to assist in obtaining the loan. On 8 August 2005, the applicant telephoned PW2 stating that the application for a loan of HK\$200 million had been approved. An initial sum of HK\$50 million would first be provided. The applicant faxed a number of documents to PW2. These included a loan agreement (Exhibit P7) and a profile of the applicant's company (Exhibit P10). Exhibit P10 showed that the applicant's company, Hill Wong International Enterprises Group Limited (Hill Wong), aimed at offering financing to clients. PW2 passed the faxes on to PW1, the general manager of the hospital, and she signed the loan agreement. On 12 August 2005, PW1 and PW2 went to Hong Kong to the applicant's office on the 30th Floor of the Bank of China Building (BOC Building). The applicant told PW1 and PW2 that he had offices on the 25th and 30th Floors of the BOC Building and over a hundred staff working in a building across the street from the BOC Building. The applicant said that his company had successfully assisted mainland companies in obtaining financial facilities in a total amount of 3 to 4 billion . The applicant also showed PW1 and PW2 an advertisement about his company in the Economic Digest and he said that his company had been established for over 30 years and had close working relationships with large financial institutions. He spoke also of having years of friendship with a Mr Chan who he stated was the boss of the lending company called Yick On . The applicant told PW1 and PW2 that a loan of HK\$200 million had been approved with Mr Chan of Yick On and that PW1 and PW2 were to follow the procedure set out in a fax (Exhibit P8) which they had been sent in order to obtain the loan. The instructions were that they had to open a Bank of China account (BOC account), and deposit HK\$7.5 million with an initial deposit of \$2 million. (This figure was to represent Mr Chan's loan arrangement fee and the applicant's commission.) The remaining HK\$5.5 million had to be deposited into the BOC account at the time of signing the loan contract, whereupon part of the total loan, HK\$50 million, would be deposited into the BOC account. The applicant then took PW1 and PW2 to open their BOC account (Exhibit P52) to facilitate the future transfer of the loan money into this account. As PW1's money was in an HSBC account, the applicant then accompanied PW1 and PW2 to HSBC to transfer the initial deposit of \$2 million into the BOC account. At this stage, PW1 transferred a sum of HK\$2,009,990 from her HSBC account into the BOC account. This sum belonged to PW1 personally. PW1 and PW2 then returned to the Mainland to await developments. On 15 August 2005, the applicant telephoned PW1 and told her that HK\$50 million was ready and that she was to come as soon as possible for processing. A further meeting between PW1, PW2, Mr Hong and the applicant was arranged on 16 August 2005 in Shenzhen. The applicant explained to PW1 the procedure for the following day for the money transfer. PW1 was to show \$2 million in cash to the applicant

first. After that, \$50 million would be electronically transferred to PW1's BOC account. The remaining part of the handling fee of \$5.5 million was to be paid after the \$50 million had been deposited in PW1's bank account. Following this, the applicant would arrange a meeting with Mr Chan, the boss of Yick On, to have a meal together. The applicant reiterated that the \$50 million loan was already prepared and ready and could be transferred the next day in Hong Kong. It was agreed that PW1 and PW2 would come to Hong Kong the following day. On 17 August 2005, PW1 and PW2 went to the applicant's office. The applicant accompanied PW1 and PW2 to the Bank of China to withdraw \$2 million cash. However, they were told that it could not be done in one transaction as the amount was too large. As a result, \$2 million was withdrawn from PW1's BOC account in two separate amounts. PW1 and PW2 returned to the applicant's office and showed the applicant the money. They then waited for the personnel from Mr Chan's company, Yick On, to effect the loan transfer of \$50 million. During this time, the applicant purported to make a telephone call to the person he referred to as Mr Chan. About half an hour later, at about 4 p.m., the applicant received a telephone call. He told PW1 and PW2 that the people from Yick On were coming over to effect the loan transfer. PW2 together with Mr Hong, stayed at the applicant's office to guard the \$2 million while the applicant took PW1 to the BOC caf to meet Tony and Mr Cheung. The applicant introduced Tony as the financial controller of the applicant's company and Mr Cheung as the accountant of the lending company, Yick On. The applicant, Tony and Mr Cheung requested to see PW1's BOC bank account. PW1 showed it to them. After the applicant, Tony and Mr Cheung had been engaged in a discussion amongst themselves for a while, PW1 was told that as her account was not with the Industrial and Commercial Bank of China (Asia) Limited (ICBC) it would be inconvenient to effect the loan transfer. As a result, the applicant took PW1 to an ICBC branch where PW1 opened a bank account (ICBC account) and was given a bank passbook (Exhibit P5). Meanwhile, Tony and Mr Cheung remained in the BOC caf. In due course, the applicant and PW1 returned to the BOC caf and showed the ICBC account to Tony and Mr Cheung. As it was almost 4:30 p.m., this left no time to effect the loan transfer which had to be postponed until the next day. At about 7:50 a.m. on 18 August 2005, the applicant arrived at the hotel where PW1, PW2 and Mr Hong were staying and brought them to his office. The applicant explained to PW1 the procedure for the loan transfer. PW2, Mr Hong, Tony and the applicant would stay in the applicant's office to guard the HK\$2 million. PW1 and Mr Cheung, meanwhile, would go to the ICBC bank for the electronic transfer of the \$50 million into the ICBC account of PW1. The electronic transfer would enable the loan money to become readily available for use by PW1. The applicant told PW1 that she should then withdraw HK\$5,000 from the ICBC account to verify that the \$50 million was in her ICBC account. Once this had been done, PW2 was to hand over the \$2 million in cash to the applicant. In the afternoon, the remaining \$5.5 million was to be withdrawn from the ICBC account and handed to the applicant. After receipt of this money, the applicant would arrange for PW1 and Mr Chan of Yick On to go to a law firm to sign the loan agreement. At night time, arrangements would be made for PW1 and Mr Chan to have dinner. After the applicant had received a phone call, he told PW1 and PW2 that Tony and Mr Cheung had arrived at the BOC Building. The applicant

accompanied PW1 to meet Tony and Mr Cheung. He told PW1 to go with Mr Cheung to the ICBC bank to effect the electronic transfer of HK\$50 million. At ICBC, Mr Cheung asked PW1 for her ICBC passbook and approached the counter. He passed a withdrawal slip to PW1 to sign and asked her to try to withdraw HK\$10,000 from her ICBC account. PW1 did so and successfully withdrew HK\$10,000. At that point, Mr Cheung swiftly showed PW1 the passbook covering some of the entries with his fingers. PW1 was able to take a glance at it. In doing so, she noticed a credit balance of about HK\$50 million which gave her the assurance that the \$50 million had been transferred to her account. It had been agreed, however, that the passbook was not to be returned to PW1 until after the transfer of the HK\$2 million had been effected. PW1 was taken by Mr Cheung to a restaurant nearby and on the instructions of Mr Cheung, PW1 called PW2 and told him to release the \$2 million cash to the applicant. After Mr Cheung received a phone call confirming that the applicant had received the HK\$2 million, Mr Cheung returned the passbook to PW1 and left. As a result of PW1's instructions to PW2, PW2 had handed the HK\$2 million to the applicant. In turn, the applicant had handed the \$2 million to the man calling himself Tony. The applicant then walked Tony out of the office and returned some three or four minutes later. When the ICBC passbook was given back to PW1, she was able to look more carefully at the entries inside. This time she noticed two \$24,995,000 deposit entries and a single deposit entry of \$10,000 recorded in the passbook. Feeling suspicious, PW1 returned to ICBC to make sure that \$50 million had in fact been deposited into her account. There, she found out that the \$50 million remaining in her account had been credited by means of cheques from the other party's bank account rather than by electronic transfer. As a result, PW1 was unable to make any withdrawal as the cheques had not yet been cleared. It was an admitted fact that the two sums of \$24,995,000 were cheque deposits. Each cheque was dishonoured on 19 August 2005. PW1, realizing that she had been cheated, immediately called PW2 in an attempt to stop the handover of the \$2 million to the applicant. PW2 then asked the applicant to get Tony who had already left the office to return the money. The applicant told PW2 not to worry and he purported to make some telephone calls to Mr Chan saying that he would take PW1 and PW2 to see him. PW2 insisted that the applicant should contact Tony first to return the money. The applicant went to the washroom but PW2 followed him. Shortly afterwards, PW1 arrived back at the applicant's office. PW1 and PW2 wanted the police to be called but the applicant refused to cooperate and would not tell PW1 what telephone number to dial. Eventually, PW1 obtained the telephone number from a secretary and made a report to the police. When the police arrived, the applicant was arrested. The police conducted video-recorded interviews with the applicant on 18 and 19 August 2005. These were admitted as evidence under section 65C of Criminal Procedure Ordinance, Cap. 221. It suffices to say that the exculpatory account which the applicant provided was false. The applicant provided the police with a false business address and asserted that his role had been innocent merely to help Mr Chan to make loans for which he was to receive a commission. That said, the applicant had in his possession business cards showing Mr Chan as general manager of Hill Wong and the contact details provided for Chan proved to be of no use and he was unable to furnish any means of contacting Mr Cheung or Tony. The applicant said that he had received

no money in the event but that if successful his commission would have been \$7.5 million. It transpired that Hill Wong had once been registered as a company but had been struck off the Companies Registry in June 2004. He possessed business cards for a company called SPS International Security Services for which company there was no record. The judge found that the applicant had deliberately concealed facts about his companies, and exaggerated the size of its operation and noted that the search of his office revealed no documents relating to Yick On at all. He concluded that Mr Chan was a fictitious person invented by the applicant as someone who could blame when the fraud was discovered. He noted too that the scheme was one which could only succeed by a plan involving minute-to-minute coordination between the applicant and the others involved with him. Sentencing was adjourned at defence counsel's invitation so that the applicant's physical and mental condition could be examined. The reports, which were duly obtained, indicated nothing of any significance. The applicant was sixty-six when he was sentenced and his eight previous convictions, most of which involved dishonesty, related to the period between 1973 and 1986. In passing sentence, the judge said: Whilst I shall not ignore the impact of the sentence on you, and perhaps your family, I should also have regard to the larger public interest when you, disguising yourself as a lending agent, defraud the borrowers of a substantial amount of money. All in all, \$2 million cash.

5. My findings, which I have extensively dealt with when delivering the verdict, are that there are other perpetrators involved in this fraud. The fact remains, however, that you played an active and cardinal role in this elaborate plot. [PW2] was introduced to you through a middleman. Your role, apparently, started off by screening the victim in Shenzhen. You then persuaded the targeted victim, by making a series of misrepresentations in the name of some dormant companies, to come to Hong Kong to complete a loan transaction. The history of the dormant companies, for instance, Hill Wong International Enterprises Group, could be traced back to you as being the central character running its business for many years prior to the commission of this offence. You tested out the victims, PW1 and PW2, by asking them to show you \$2 million cash. After you had sighted the money and were certain that the plot was going to be fruitful, you lured them to release the money into the hands of one of the perpetrators.
6. The evidence established that you are the focal person responsible for initiating, planning and executing the plot. The conduct complained of has sharply undermined the reputation of Hong Kong as an international financial centre, bearing in mind that the victims came here for the sole purpose of raising funds.
7. I have been provided with the opportunity of getting the true flavour of the case after hearing its detailed and explicit evidence. Despite the overwhelming evidence, you foolishly elected to contest the charge, which shows that you have no remorse whatsoever. I do not find, either from your personal or factual background of the case, any mitigating factors in your favour.

8. In sentencing I am mindful that each case must be decided on its own facts. The underlying principle, as set out in Attorney General v Dominic Cheung Kai Man CAAR suggests that, for other serious fraud not quite up to that level he would in future expect a starting point in the region of 10 years, that is, for a single offence and after conviction following trial . Having regard to the role that you played, the amount of the money defrauded, the complete absence of remorse and, more particularly, the dishonest activities disclosed, which strike at the very heart of normal daily commercial transactions here in Hong Kong, a 4 years term of imprisonment is appropriate under the present set of circumstances, and that is what I order. (Appeal bundle pp. 29-31) Mr Mughal, who did not appear in the court below, submitted that the sentence was manifestly excessive. In particular, he argued that the case to which the judge had referred towards the end of his sentencing remarks, Attorney General v Dominic Cheung Kai-man [1987] HKLR 788 was an inappropriate example to choose when the facts in that case related to a loss of \$112 million to a bank brought about by a breach of trust on the part of its general manager. In this regard, we think Mr Mughal had a valid point. Mr Mughal went on to produce a number of decisions of this court wherein sentences below the level imposed in the present case had been imposed for crimes involving dishonesty of a more serious kind. We were not helped by these. There are no guidelines for this type of offence where the circumstances in aggravation or in mitigation are always going to be case-specific. Here, there was no mitigation. The applicant has shown no remorse and no restitution has been made. Plainly, the loss to PW1 of such a large sum will have been very considerable and the applicant s role in depriving her of this money was crucial. Whether the applicant was aware that the money was PW1 s own money matters little in the circumstances as the money being raised, as he well knew, was for a hospital. In many ways, this case bears all the hallmarks of a sophisticated street scam. We do not consider, on an overall view of this case, that the sentence imposed was outside the range which can be considered appropriate. No doubt it was at the high end of the range but that is not the same thing as saying that it was excessive, let alone manifestly excessive. The application is dismissed. (M. Stuart-Moore) macrobutton nomacro Vice-President (Frank Stock) macrobutton nomacro Justice of Appeal (C-M Beeson) Judge of the Court of First Instance Ms Grace Chan, SGC, of the Department of Justice, for the Respondent. Mr Hanif Mohamed Mughal, instructed by Messrs Tsangs, assigned by Director of Legal Aid, for the macrobutton nomacro Applicant (re: sentence). PAGE - PAGE - A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk 1udk G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V "0 "0 "0 i\$&`G Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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