

HONG KONG / JUDGMENT

HKSAR v. LEUNG YUK WING

[2021] HKCA 1933

COURT

Court of Appeal

DECIDED

16 December 2021

CASE / FILE NUMBER

CACC139/2021

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bjbj CACC 139/2021

[2021] HKCA 1933 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF APPEAL CRIMINAL APPEAL NO 139 OF 2021 (ON APPEAL FROM
DCCC NO 149 OF 2019)

HKSAR Respondent v LEUNG YUK WING Applicant

Before: Hon Zervos JA in Court Date of Hearing: 16 December 2021 Date of Decision: 16
December 2021

DECISION

This is an application for bail pending appeal. On 15 June 2021, the applicant (D2 at trial) and his co-accused (D1 at trial) were convicted after trial by District Court Judge Eddie Yip (the judge) of conspiracy for an agent to accept advantages, contrary to sections 9(1)(a) and 12(1) of the Prevention of Bribery Ordinance, Cap 201 and sections 159A and 159C of the Crimes Ordinance, Cap 200. On 30 June 2021, the judge sentenced the applicant to 30 months imprisonment. On 13 July 2021, the applicant filed a notice for leave to appeal against his conviction. He has not filed Perfected Grounds of Appeal at this stage of the appeal proceedings as his lawyers are still considering the record of the trial proceedings. Instead, in support of his bail application, he has set out three points as the grounds of appeal which may be reasonably arguable. I should mention that on 22 October 2021, I granted bail to D1. My reasons for doing so are set out in my written decision of the same date. The brief facts of this case were that the applicant and another defendant (D3 at trial) were employees of a jet charter broker company, L Voyage Limited (LV),

which arranged private jet charters for clients. D1 was also in the jet charter business and on occasion LV would place jet flight orders with a company operated by D1, Joy Fly Jet Limited (JFJ). It was alleged that D1 and D2 conspired, between 4 July 2017 to 19 March 2018, for the applicant to accept advantages by way of commissions from D1, in return for LV placing jet flight orders with JFJ for LV's clients. It was not in dispute at trial that D1, on behalf of JFJ, paid commissions to the applicant and D3, employees of LV, in respect of flight charters JFJ had arranged, nor that the applicant approached D1 to solicit such commission in a conversation that took place at the end of August 2017. The issue at trial in respect of the applicant's case was whether he had permission or consent from his employer to accept the commissions in question. The issue in respect of D1's case was somewhat different in that the applicant told her that he had his principal's consent to accept the commissions, but if that was not true then he lied to her. It seems it was the practice for LV to pay the applicant and D3 commissions for successful transactions. It was the applicant's case that if the charter involved an illegal flight, in the sense that the jet was not licensed to carry out commercial chartering (referred to as a Part 91 flight), then extra commission would be paid that would not be shown in LV's records. The commission was paid and concealed by a mark-up to the fee for the charter. The applicant claimed that this had been agreed to by the principle of LV who was a person by the name of Diana Chou. However, she did not give evidence at the trial. Another member of LV, who was the director of finance and operations (PW1), gave evidence instead. He testified that according to his knowledge and based on the available records, the applicant had not asked Diana Chou or the management of LV for permission to receive any commissions from JFJ. The three points that the applicant raises as potential grounds of appeal are as follows. First, LV's principal did not give evidence at the trial and as a consequence the judge accepted hearsay evidence which was inadmissible. He also complains that the judge did not reasonably analyse the evidence of the representative of LV in respect of the defence case. Secondly, the judge did not reasonably analyse the evidence in terms of an alleged conspiracy between himself and D1, and improperly concluded that he was the mastermind of the case. Thirdly, the judge failed to give the defence the opportunity of making closing submissions. Bail pending appeal is an exceptional remedy that may be granted where it appears that the appeal has a strong likelihood of success (the merit ground), or where there is a likelihood that all or a substantial part of the sentence would be served before the disposal of the appeal (the time ground). In considering the time ground, it must also be demonstrated that the appeal is at least reasonably arguable or promising. In other words, the grounds of appeal are reasonably arguable in that they afford some real chance of success. In the circumstances of the present application, the only basis on which to consider whether to grant bail is on the merit ground. In my view, it would only be in respect of the first point. At first sight, it does seem unusual that Diana Chou, who was the owner and operator of LV, did not give evidence as to whether she gave her consent to the applicant to accept the commissions in question in the manner by which they were incorporated in the fee and paid to the employee. Instead, PW1 gave evidence on the company's behalf. The applicant testified at his trial that at a meeting on or about 28 August 2017, he raised with Diana Chou the payment of extra commission for arranging the illegal flights (the Part 91 flights). She agreed to the payment of the extra commission which was to be reflected as a mark-up in the buy price of the

transaction. The applicant subsequently left the employ of LV in March 2018, and went to work for D1 at JFJ. A solicitors letter was sent to the applicant, bringing to his attention that he was not to work for a competitor for a period of 6 months. At the same time, PW1 lodged a complaint with the Independent Commission Against Corruption (ICAC). The applicant also admitted in his testimony that he initially lied to the investigators about the reason for D1 to pay him the money. He said his motive for doing so was to protect Diana Chou from being investigated for the illegal flights. It appears there was evidence that the extra commissions were paid in respect of the illegal flights but this evidence only came from the defence during the course of the trial. It is to be noted that the judge rejected the evidence of D1 and the applicant. The judge addressed the issue of the illegal flights by finding that the relevant regulation would not apply to LV as a charter broker. However, the judge seems to leave open the possibility that such flights did take place but that Diana Chou or the management of LV were not aware of them. Another aspect in this case is that the judge made a finding that Diana Chou was not aware of the usage of the illegal flights (referred to as Part 91 flights) and if there had been discussion with her about the extra commission she would have followed it up and discussed it with PW1. These findings were made in the absence of evidence from Diana Chou. There may be an evidential foundation for the judge making such a finding but it is not clearly apparent on the papers currently before the court. It is perplexing as to why Diana Chou was not called to give evidence, bearing in mind she was central to whether consent was given to the applicant to accept the extra commissions. I am informed that no request or application was made by the defence to have her attend to give evidence, hence the issue may rest on whether the evidence before the court justified the findings made in respect of Diana Chou's knowledge and actions. In light of the foregoing matters, I am satisfied that the applicant should be granted bail pending appeal. (Kevin Zervos) Justice of Appeal Mr Marcus Lee, SPP, of the Department of Justice, for the respondent The applicant appears in person HKSAR v Fong King-choi, unrep., CACC 319/2018, 2 May 2019, at [3]-[6]. HKSAR v Chung Ho Yin, unrep., CACC 75/2020, 17 September 2021, at [39] and [40]. Reasons for Verdicts, at [13]-[26]. Reasons for Verdict, at [45] to [53]. See Reasons for Verdict, at [68]-[73]. See Reasons for Verdict, at [76]. Reasons for Verdict, at [76]. PAGE

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Prepared on 28 October 2026 · Esheria