

HONG KONG / JUDGMENT

WONG WEI KIN CATHY v. HKSAR

COURT

Court of Final Appeal

DECIDED

20 September 2007

CASE / FILE NUMBER

FAMC31/2007

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj FAMC No. 31 of 2007 IN THE COURT OF FINAL APPEAL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION MISCELLANEOUS PROCEEDING NO. 31 OF 2007 (CRIMINAL) (ON APPLICATION FOR LEAVE TO APPEAL FROM HCMA NO. 1148 OF 2006)

Between: WONG WEI KIN CATHY Applicant
HONG KONG SPECIAL ADMINISTRATIVE REGION
Respondent

Appeal Committee : Chief Justice Li, Mr Justice Chan PJ and Mr Justice Ribeiro PJ Date of Hearing: 20 September 2007 Date of Determination: 20 September 2007 D E T E R M I N A T I O N
Chief Justice Li : The applicant was convicted by Mr William Lam, Magistrate, of one count of using a copy of a false instrument contrary to s. 74 of the Crimes Ordinance. She was fined \$25,000. Her appeal to the Court of First Instance (Deputy Judge Toh) was dismissed. The applicant was the director of Man Po Hong Limited (the Company). The Company applied for and was granted a transitional wholesaler licence in Chinese herbal medicines under the Chinese Medicine Ordinance, Cap. 549. The application form dated 15 July 2003 was signed by the applicant as a director of the Company. It contained her declaration that the information therein and the relevant checklist is full, complete and true to the best of my knowledge and belief . In support of its application, the company was required to show that it has already conducted the wholesale business of Chinese herbal medicines on 3 January 2000. For that purpose, a copy of an invoice dated 27 November 1999 purportedly issued by Hip Hing (Nam Tai) Medicine Co. was enclosed as part of the application. The invoice was false. Hip Hing (Nam Tai) Medicine Co. had never had any business dealings with the Company. At trial, the applicant did not dispute that she signed the application form and that the invoice in question was false. The issue was whether she knew that the copy of the invoice formed part of the application and was false at the material time. The applicant gave evidence. The defence case was that at the time, she was preoccupied with litigation between herself and her father. She did not complete the application form. She simply signed it. She might have signed a blank form or a completed form without paying attention to its contents. When she signed, no documents were attached to it. She could not give

any explanation of the presence of the copy of the false invoice. The applicant said that as Mr Buaton, the Company's auditor, promised to make inquiries with the Department of Health regarding the application process, she suspected that it was he who put in the copy of the false invoice. The applicant's solicitors had requested Mr Buaton to give a witness statement and be a defence witness at trial. But he did not co-operate. However, the applicant did not serve any subpoena to compel his attendance. Further, the defence did not call Ms Ho of the Company to give evidence. In her evidence, the applicant said that Ms Ho was involved in the application process. The Magistrate rejected the applicant's evidence. He held that : the only and irresistible inference that can be made was that the [applicant] certainly knew [the application form] she signed contained a false invoice which she also knew had some very important role to play. The applicant applies for leave to appeal on the substantial and grave injustice ground. It is submitted that the Magistrate erred in failing to direct himself about the possible prejudice suffered by the defence as a result of Mr Buaton's absence at the trial. Further, it is submitted that on appeal, the Deputy Judge should have held that the Magistrate had so erred. She failed to so hold because she had misunderstood the defence case. The defence case was that Mr Buaton was involved in the application process whereas the Deputy Judge held that there was nothing to suggest that he had taken part. In our view, there is no reasonably arguable case that the Magistrate's failure to direct himself as suggested constitutes a substantial and grave injustice in the circumstances of this case. It could not be maintained that Mr Buaton's evidence, if available, is likely to have assisted the defence. The Magistrate was entitled to view the applicant's evidence as only suggesting that Mr Buaton might have put in the copy of the false invoice and not as asserting that he did so. And the Magistrate was right in not speculating what Mr Buaton's evidence might be. The Deputy Judge was not in error in agreeing with the Magistrate. Further, whilst Mr Buaton did not agree to give a witness statement to the defence, there is no suggestion that he had disappeared. He could not be said to be a witness who was not available. As has been noted, the applicant did not serve a subpoena on him. It must also be noted that it was not suggested that Ms May Ho, who on the applicant's evidence was involved in the application process, was not available to give evidence. Accordingly, the application for leave is dismissed. (Andrew Li) (Patrick Chan) (R.A.V. Ribeiro) Chief Justice Permanent Judge Permanent Judge Mr M. K. Wong SC and Ms Samantha Chiu (instructed by Messrs P.C. Woo & Co.) for the applicant. Mr Cheung Wai Sun and Ms Lily Ho (of the Department of Justice) for the respondent. - PAGE <G&t zO\b bxn0 Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong SAR Title ^:GX ^:GX ^:GX Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=58616

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/wong-wei-kin-cathy-v-hksar-2007>

Prepared on 26 October 2026 · Esheria