IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 113

Magistrate's Appeal No 9201 of 2021/01

Between

Tang You Liang Andruew

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9202 of 2021/01

Between

Koryagin, Vadim

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Offences — Property — Cheating — Section 417 of the Penal Code]

TABLE OF CONTENTS

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Tang You Liang Andruew
v
Public Prosecutor and another appeal

[2022] SGHC 113

General Division of the High Court — Magistrate's Appeal Nos 9201 and 9202 of 2021/01
Kannan Ramesh J
25 March, 1 April 2022

18 May 2022

Kannan Ramesh J:

Introduction

1 The appellants in HC/MA 9201/2021/01 and HC/MA 9202/2021/01 were Tang You Liang Andruew ("Andruew") and Koryagin Vadim ("Vadim") respectively. The appellants were each convicted of three charges of abetment by conspiracy to cheat two banks by concealing the ultimate beneficial owners ("UBO") of bank accounts opened individually by three companies that were incorporated by the appellants. Andruew was sentenced to two weeks' imprisonment and Vadim was sentenced to four weeks' imprisonment: *Public Prosecutor v Tang You Liang Andruew and another* [2021] SGDC 266 ("GD") at [3].

2 The appellants appealed against their conviction and sentence on all three charges. I heard the parties on 25 March 2022. After considering their submissions and the evidence before me, I delivered oral grounds on 1 April 2022 dismissing the appeals. These are the full grounds of my decision.

Facts

Background

3 MEA Business Solutions Pte Ltd ("MEA") was a corporate secretarial company that was owned and operated by Vadim, a Russian businessman. MEA was incorporated in February 2014 and ceased to exist as a legal entity after it was amalgamated with Intracorp Pte Ltd in January 2019. MEA's primary business was to assist its foreign clients to incorporate companies and open bank accounts in Singapore: GD at [13]. As part of MEA's services, Vadim also provided Singapore nominee directors for the companies that MEA incorporated for its clients. The nominee directors received instructions from the foreign clients of MEA through Vadim and were *not* involved in the operations of the companies. The responsibilities of the nominee directors included assisting MEA to (a) incorporate the companies, and (b) open bank accounts in the names of the companies.

4 Vadim's pool of nominee directors included Andruew, a part time wrestler, actor and personal fitness instructor. Andruew became acquainted with Vadim in 2011 through their mutual interest in wrestling. Sometime in 2014, Andruew agreed to be a nominee director in order to supplement his income. As was the case with the other nominee directors that MEA engaged, Andruew's involvement was limited to incorporating companies and opening the relevant bank accounts. For his services as a nominee director, Andruew was paid between $750 and $1,300 per company upon appointment, and an additional

$750 per company for each year his directorship was renewed. Between 2014 and 2016, Andruew acted as a nominee director for more than 50 companies incorporated by MEA.

5 The manner in which the bank accounts of the three companies (that were the subject matter of the charges the appellants faced) were opened merits further elaboration. I begin with a summary of the key details of the three companies ("the Companies") and their respective bank accounts (each a "Bank Account" and collectively, "the Bank Accounts"):

(a) On 10 September 2014, Evoque Capital Corp Pte Ltd ("Evoque") was incorporated, with Andruew as its sole shareholder and director. Evoque opened a bank account with Oversea-Chinese Banking Corporation Limited ("OCBC") on 11 September 2014.

(b) On 19 September 2014, Babo Group Pte Ltd ("Babo") was incorporated, with Andruew as its sole shareholder and director. Babo opened a bank account with OCBC on 3 October 2014.

(c) On 16 May 2016, Sensetec Pte Ltd ("Sensetec") was incorporated, with Andruew as its sole shareholder and director. Sensetec opened a bank account with Maybank Singapore Limited ("Maybank") on 17 May 2016.

For ease of reference, I shall refer to OCBC and Maybank collectively as "the Banks".

6 The Banks followed a similar due diligence process for the opening of the Bank Accounts. This due diligence process was put in place to comply with Notice 626 dated 30 November 2015 ("the Notice") issued by the Monetary

Authority of Singapore ("the MAS"). The Notice was a direction to banks issued pursuant to s 27B of the Monetary Authority of Singapore Act (Cap 186, 1999 Rev Ed) ("the Act") to prevent money laundering and terrorism financing. I will elaborate further on the background to the Notice later in these grounds at [30]–[40]. It is helpful to reproduce s 27B of the Act to understand the objective of the section and the context of the Notice:

> **Requirements for prevention of money laundering and terrorism financing**
>
> **27B.**—(1) The Authority may, from time to time, *issue such directions or make such regulations concerning any financial institution or class of financial institutions as the Authority considers necessary for the prevention of money laundering or for the prevention of the financing of terrorism.*
>
> (1A) In particular, the directions and regulations under subsection (1) may provide for —
>
> (*a*) *customer due diligence measures to be conducted by financial institutions to prevent money laundering and the financing of terrorism*; and
>
> (*b*) the records to be kept for that purpose.
>
> (1B) A financial institution must —
>
> (*a*) *conduct such customer due diligence measures as may be specified by the directions referred to in subsection (1A) that are issued to it*, or as may be prescribed by the regulations referred to in that subsection that are applicable to it; and
>
> (*b*) maintain records on transactions and information obtained through the conduct of those measures for such period and in such manner as may be specified by the directions referred to in subsection (1A) that are issued to it, or as may be prescribed by the regulations referred to in that subsection that are applicable to it.
>
> (2) A financial institution which —
>
> (*a*) fails to comply with a direction issued to it under subsection (1);
>
> (*b*) contravenes any regulation made under subsection (1); or

> (*c*) contravenes subsection (1B),
>
> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1 million and, in the case of a continuing offence, to a further fine of $100,000 for every day or part of a day during which the offence continues after conviction.
>
> (3) In this section, "financial institution" has the same meaning as in section 27A(6) read with section 27A(7).
>
> [emphasis added]

7 Pursuant to measures that were put in place to comply with the Notice, the Banks required Andruew to complete and submit several documents before opening the Bank Accounts. This included an account opening form and the relevant supporting documents. The Banks were required to perform a customer due diligence ("CDD") process on their customers as part of their "Know-Your-Client" ("KYC") measures, based on the information disclosed in the account opening form and the supporting documents. The CDD process was one of the core obligations the Notice imposed on the Banks in order to combat money laundering and terrorism financing. The truthfulness of the information that was disclosed was therefore critical. One of the crucial pieces of information that Andruew was required to disclose was a declaration of the UBO of each of the Bank Accounts (each a "Declaration" and collectively, "the Declarations"). The identification and verification of the UBO was a specific requirement under paragraphs 6.13 to 6.17 of the Notice, and the Declarations was specifically sought for this purpose. It is relevant that the account opening forms for all the Bank Accounts stated that the Banks were "entitled to rely on [the] declaration above on the identity(ies) of and information relating to the Beneficial Owner(s) of the Account".

8 In this regard, Andruew declared to OCBC that he was the UBO of Evoque and Babo and to Maybank that he was the UBO of the bank account to be opened for Sensetec. The Declarations were in fact not true. The real UBOs

of the Companies were MEA's foreign clients who were not disclosed to the Banks at the time the Bank Accounts were opened or subsequently.

9 As noted at [7] above, Andruew was also required to attach supporting documents on the Companies relating to the Declarations. These included the Companies' Memorandum and Articles of Association and documents from the Accounting and Corporate Authority ("ACRA"): GD at [17]. Notably, the supporting documents Andruew attached also did not disclose the true identities of the UBOs. Again, Andruew made no effort to state the correct facts at any time.

10 Based on the information in the account opening forms, including the Declarations, and the supporting documents, the Banks carried out a series of checks on the Companies and Andruew using their internal platforms for any adverse reports: GD at [17]. On the strength of the Declarations and supporting documents, the Banks' checks were concluded with no adverse report on the Companies or Andruew: GD at [17]. The Bank Accounts were thus opened for the Companies on the basis that Andruew was the UBO. The Banks were accordingly misled into believing that Andruew was the UBO of the Companies.

11 It was undisputed that at all material times, including during the process of opening the Bank Accounts and making the Declarations, Andruew acted entirely on Vadim's instructions. The information that Andruew provided to the Banks was given to him by Vadim based on instructions from MEA's foreign clients. Once the Companies were incorporated and the Bank Accounts opened, Andruew's involvement ended. He transferred control of the Companies and Bank Accounts to MEA's foreign clients with Vadim preparing either a declaration of trust or a transfer of shares: GD at [14]. Andruew consequently

handed over to Vadim the bank tokens issued by the Banks for the Bank Accounts, and was not aware of any transactions that were thereafter undertaken.

Procedural history

12 The appellants initially faced four charges under s 417 read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"). However, at the close of the Prosecution's case, a material witness in relation to one set of charges was overseas and unable to attend the trial. Thus, the Prosecution withdrew that charge: GD at [2]. As noted earlier at [1], Andruew and Vadim were convicted on the three remaining charges and sentenced to two weeks' and four weeks' imprisonment respectively. I set out the three charges for ease of reference.

> **Andruew's 1st Charge DAC-934369-2019**
>
> You … are charged that you, on or about 3 October 2014, in Singapore, did abet by engaging in a conspiracy with one Koryagin Vadim to cheat the Oversea-Chinese Banking Corporation Limited ("OCBC"), and in pursuance of that conspiracy and in order to the doing of that thing, you deceived OCBC into believing that you were the ultimate beneficial owner of Babo Group Pte Ltd ("Babo"), thereby intentionally inducing OCBC to omit to consider the ultimate beneficial owner of Babo in OCBC's decision to open a bank account for Babo, which OCBC would not have omitted to do if OCBC were not so deceived, and which was likely to cause harm to OCBC in reputation, which act was committed in consequence of your abetment, and you have thereby committed an offence punishable under Section 417 read with Section 109 of the Penal Code (Cap 224, Rev Ed 2008).
>
> **Andruew's 2nd Charge DAC-934370-2019**
>
> You … are charged that you, on or about 11 September 2014, in Singapore, did abet by engaging in a conspiracy with one Koryagin Vadim to cheat the Oversea-Chinese Banking Corporation Limited ("OCBC"), and in pursuance of that conspiracy and in order to the doing of that thing, you deceived

OCBC into believing that you were the ultimate beneficial owner of Evoque Capital Corp Pte Ltd ("Evoque"), thereby intentionally inducing OCBC to omit to consider the ultimate beneficial owner of Evoque in OCBC's decision to open a bank account for Evoque, which OCBC would not have omitted to do if OCBC were not so deceived, and which was likely to cause harm to OCBC in reputation, which act was committed in consequence of your abetment, and you have thereby committed an offence punishable under Section 417 read with Section 109 of the Penal Code (Cap 224, Rev Ed 2008).

Andruew's 3rd Charge DAC-934372-2019

You … are charged that you, on or about 17 May 2016, in Singapore, did abet by engaging in a conspiracy with one Koryagin Vadim to cheat Maybank Singapore Limited ("Maybank"), and in pursuance of that conspiracy and in order to the doing of that thing, you deceived Maybank into believing that you were the ultimate beneficial owner of the Maybank account to be opened for Sensetec Pte Ltd ("Sensetec"), thereby intentionally inducing Maybank to omit to consider the ultimate beneficial owner of the account in Maybank's decision to open the bank account for Sensetec, which Maybank would not have omitted to do if Maybank were not so deceived, and which was likely to cause harm to Maybank in reputation, which act was committed in consequence of your abetment, and you have thereby committed an offence punishable under Section 417 read with Section 109 of the Penal Code (Cap 224, Rev Ed 2008).

Vadim's 1st Charge DAC-934343-2019

You … are charged that you, on or about 3 October 2014, in Singapore, did abet by engaging in a conspiracy with one Tang You Liang Andruew to cheat the Oversea-Chinese Banking Corporation Limited ("OCBC"), and in pursuance of that conspiracy and in order to the doing of that thing, Tang You Liang Andruew deceived OCBC into believing that he was the ultimate beneficial owner of Babo Group Pte Ltd ("Babo"), thereby intentionally inducing OCBC to omit to consider the ultimate beneficial owner of Babo in OCBC's decision to open a bank account for Babo, which OCBC would not have omitted to do if OCBC were not so deceived, and which was likely to cause harm to OCBC in reputation, which act was committed in consequence of your abetment, and you have thereby committed an offence punishable under Section 417 read with Section 109 of the Penal Code (Cap 224, Rev Ed 2008).

Vadim's 2nd Charge DAC-934344-2019

> You … are charged that you, on or about 11 September 2014, in Singapore, did abet by engaging in a conspiracy with one Tang You Liang Andruew to cheat the Oversea-Chinese Banking Corporation Limited ("OCBC"), and in pursuance of that conspiracy and in order to the doing of that thing, Tang You Liang Andruew deceived OCBC into believing that he was the ultimate beneficial owner of Evoque Capital Corp Pte Ltd ("Evoque"), thereby intentionally inducing OCBC to omit to consider the ultimate beneficial owner of Evoque in OCBC's decision to open a bank account for Evoque, which OCBC would not have omitted to do if OCBC were not so deceived, and which was likely to cause harm to OCBC in reputation, which act was committed in consequence of your abetment, and you have thereby committed an offence punishable under Section 417 read with Section 109 of the Penal Code (Cap 224, Rev Ed 2008).

Vadim's 3rd Charge DAC-934346-2019

> You … are charged that you, on or about 17 May 2016, in Singapore, did abet by engaging in a conspiracy with one Tang You Liang Andruew to cheat Maybank Singapore Limited ("Maybank"), and in pursuance of that conspiracy and in order to the doing of that thing, Tang You Liang Andruew deceived Maybank into believing that he was the ultimate beneficial owner of the Maybank account to be opened for Sensetec Pte Ltd ("Sensetec"), thereby intentionally inducing Maybank to omit to consider the ultimate beneficial owner of the account in Maybank's decision to open the bank account for Sensetec, which Maybank would not have omitted to do if Maybank were not so deceived, and which was likely to cause harm to Maybank in reputation, which act was committed in consequence of your abetment, and you have thereby committed an offence punishable under Section 417 read with Section 109 of the Penal Code (Cap 224, Rev Ed 2008).

The parties' cases

13 At trial, the Prosecution's case was that all the elements of the charge under s 417 of the Penal Code as well as the element of conspiracy between the appellants were made out. They sought to prove the following cumulative elements:

(a) Through the Declarations, the Banks were induced into believing that Andruew was the UBO of the Companies, and the Bank Accounts;

(b) At the time the Bank Accounts were opened, Andruew was in fact not the UBO;

(c) The Banks were therefore intentionally deceived into believing that Andruew was the UBO, and did not take steps to identify and verify the true UBO, in deciding whether to open the Bank Accounts;

(d) The Declarations were likely to cause harm to the Banks' reputation; and

(e) This was done in furtherance of a conspiracy between the appellants.

14 The appellants disputed each of these elements at trial. Their arguments were dealt with in the reasoning of the District Court Judge ("the Judge"), which I now turn to.

Decision below

Conviction

15 In relation to the first element, the Judge found that Andruew deceived the Banks into believing that he was the UBO of the Companies and the Bank Accounts. The Judge accepted the evidence of the bank officers who had attended to Andruew when opening the Bank Accounts, that they would have confirmed that he was the UBO of the Companies pursuant to their standard procedures: GD at [20], [22], [31], [37]. The Judge also rejected Andruew's

claim that he did not understand what a UBO was when signing on the account opening forms. Andruew's statements to the Corrupt Practices Investigation Bureau ("CPIB") revealed that he understood the difference between the beneficial owner of the Companies and a nominee director: GD at [46]–[49]. The Judge noted that all of Andruew's statements were accepted to be voluntarily made and were admitted into evidence without any challenge as to their admissibility: GD at [44]. The Judge thus found that "[t]he irresistible conclusion from his response to CPIB [wa]s that [Andruew] was well aware that he was declaring himself to be the UBO of the respective companies as otherwise, the banks might not have allowed the bank accounts to be opened if they knew that he was not the true UBO": GD at [58].

16 In relation to the second element, the Judge found that Andruew was not the UBO of the Companies when the Bank Accounts were opened. The Judge also found the appellants' argument, that Andruew was in fact the UBO until he signed over his rights to the new UBO, to have been contradicted by the evidence: GD at [67]. As noted at [11] above, it was undisputed that at all material times, Andruew acted on Vadim's instructions and had no right to use the funds in the Bank Accounts without authorisation from Vadim: GD at [68]. The Judge was thus of the view that Andruew had no control over the Companies' affairs: GD at [70]–[71]. Consequently, it could not be said that Andruew was the UBO of the Companies or the Bank Accounts at any point of time.

17 The first two elements being proved, it therefore followed that the Banks were intentionally deceived by Andruew into failing to identify and verify the true UBO in deciding whether to open the Bank Accounts.

18 In relation to the fourth element, the Judge found that the successful deception of the Banks was likely to cause harm to their reputation. The deception would tarnish the Banks' reputation as an "organisation that is vigilant and trustworthy" and call into question the Banks' "level of vigilance and ability to guard against being hoodwinked", thus "invariably affect[ing] the public's overall trust and confidence in the bank": GD at [89]. The Judge stated that the likelihood of harm to the Banks' reputation lay in the fact that the deception by Andruew had "completely undermined the banks' efforts to comply with their obligation of KYC imposed by MAS on the banks": GD at [92]. The Judge disagreed with Vadim's submission that since no wrongdoing had been uncovered in the use of the Bank Accounts, it *prima facie* meant that likelihood of harm to the Banks' reputation was therefore very low: GD at [92]. The Judge reasoned that the deception had caused the Banks to completely omit to conduct the CDD process on who the true UBO was. This in turn exposed the Banks to the very real risk of dealing with illicit funds and being associated with such unlawful activities: GD at [92].

19 In relation to the fifth element, the Judge found that Andruew's actions were done pursuant to a conspiracy between him and Vadim. While there was no direct evidence that Vadim had specifically told Andruew to declare himself to be the UBO, the Judge observed that Vadim had coached Andruew on how to present himself and answer questions when opening the Bank Accounts: GD at [107]. The Judge thus concluded that there was sufficient evidence that the appellants had the common object of presenting Andruew as the UBO to the Banks to ensure that there would not be any difficulty in getting the Bank Accounts opened: GD at [110].

Sentence

20 The Judge considered four main factors in arriving at his decision on sentence.

21 First, the custodial threshold had been crossed due to the meticulous steps taken by the appellants to deceive the Banks as to the identity of the UBO. This resulted in the offences going undetected for two to three years: GD at [133]–[134].

22 Second, the principle of parity of sentencing had to be given due consideration, as there were two other nominee directors recruited by Vadim who had similarly made false declarations in opening bank accounts for MEA's clients. These nominee directors had pleaded guilty and were sentenced to five days' imprisonment per charge. The sentences for these two directors were thus the starting point for Andruew's sentence: GD at [135].

23 Third, an uplift from the indicative starting sentence of five days' imprisonment per charge was warranted to reflect the absence of the mitigating effect of a guilty plea: GD at [136]. Nonetheless, a small uplift was sufficient for Andruew's sentence as no financial losses were caused to the Banks and the Bank Accounts were not misused: GD at [137].

24 Fourth, the sentence imposed on Vadim ought to be higher than Andruew's because Vadim was the directing mind behind the conspiracy and stood to gain the most from the successful opening of the Bank Accounts: GD at [138].

Issues

25 On appeal, the Prosecution largely adopted the Judge's reasoning. The thrust of the appellants' appeal against conviction can be distilled into three main arguments:

(a) First, there was a lack of causal connection between the deception caused by the Declarations and the likelihood of harm to the reputation of the Banks.

(b) Second, the Declarations were in fact truthful, as Andruew was the UBO at the time the Bank Accounts were opened.

(c) Third, there was no specific or direct evidence of a conspiracy between the appellants.

26 In their appeal against sentence, the appellants argued that:

(a) First, the Judge erred in applying *Idya Nurhazlyn bte Ahmad Khir v Public Prosecutor and another appeal* [2014] 1 SLR 756 ("*Idya Nurhazlyn"*) as the present case involved a bank account application form, which was not a financial instrument or facility.

(b) Second, the Judge erred in relying on unreported decisions.

(c) Third, the Judge did not give sufficient weight to the appellants having suffered significant punishment in the form of significant loss of income, and in Vadim's case, significant loss of freedom from "*de-facto* 'home detention'".

27 Accordingly, my analysis will be as follows:

(a) First, I shall deal with the appeals against conviction. Within this analysis, I shall focus on the likelihood of harm to the Bank's reputation as a result of the Declarations being untrue.

(b) Second, I shall consider the appeals against sentence.

Issue 1: Conviction

The causal connection between the Declarations and the likelihood of harm to the Banks' reputation

28 The first argument raised by the appellants centred on the purported lack of a causal connection between the deception caused by the Declarations and the likelihood of harm to the reputation of the Banks. This argument formed the main thrust of the appellants' written and oral submissions, and rested on the premise that the risk of dealing with illicit funds did not necessarily lead to the likelihood of reputational harm being suffered by the financial institution. I found the appellants' argument to be flawed.

29 It is important to start by emphasising that s 415 of the Penal Code requires proof that the deception is likely to cause damage or harm. There is no requirement to show actual harm. With this in mind, it is important to understand why an untruthful Declaration is likely to cause harm to the reputation of a financial institution. To understand this, one must start with s 27B of the Act and the Notice. I begin with the genesis of s 27B.

30 In February 2007, the Act was amended to consolidate the MAS' powers. Section 27B was enacted to "enable MAS to issue regulations or directions to counter money-laundering and terrorism financing, thereby achieving a more responsive regulatory framework": *Singapore Parliamentary Debates, Official Report* (12 February 2007) vol 82 ("*Singapore Parliamentary*

Debates 12 February 2007") at col 1252 (Lim Hng Kiang, Minister for Trade and Industry). This was done as part of Singapore's continued efforts to "keep our financial system clean and well-regulated …[as] our success as a financial centre has been built on a consistent track record of integrity and the rigorous implementation and enforcement of international standards": *Singapore Parliamentary Debates 12 February 2007* at cols 1251–1252.

31 Section 27B of the Act was highlighted again in a subsequent amendment to the Act in September 2007. The amendment increased the maximum penalty for breaching directions from the MAS relating to the prevention of money laundering or terrorism financing: see s 27B(2) of the Act. To be clear, these were penalties that were imposed on financial institutions for failing to abide by the MAS' directions. This spoke to Parliament's recognition that money laundering and terrorism financing are serious threats to financial institutions. Compliance with the MAS' directions was thus of paramount importance and financial institutions risked being penalised if their accounts were used for money laundering or terrorism financing. It also underscored the importance of the CDD process and KYC obligation, a point I revisit at [38] below.

32 The then Second Minister for Finance Mr Tharman Shanmugaratnam's speech in *Singapore Parliamentary Debates, Official Report* (19 September 2007) vol 83 at cols 1963–1964 makes the intent of s 27B of the Act clear. I reproduce the salient extracts below.

> … Earlier this year, Parliament approved an amendment to the Monetary Authority of Singapore Act to consolidate the MAS' powers, under the various Acts it administers, *to issue Notices on anti-money laundering and countering the financing of terrorism (AML/CFT) in a single Act (ie, section 27B of the Monetary Authority of Singapore Act). MAS has since re-issued the AML/CFT Notices under this section to the financial institutions and persons it regulates.*

> The current amendments to the MAS Act seek *to enhance the deterrents against money laundering and terrorist financing* in the financial sector.
>
> …
>
> *Money laundering* ***is an ever-present danger in global markets****. Left unhindered, it can* ***injure the reputations of financial institutions****, erode the integrity of financial markets, and weaken the resilience of the global economy.* All governments have to play their part in the fight against money laundering, and *more so those in global financial centres such as Singapore.*
>
> *The rise in terrorism activity around the world makes it even more imperative that governments take effort to suppress terrorism financing.* I understand that later in today's session, the Deputy Prime Minister and Minister for Home Affairs will be moving amendments to the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA). These amendments, *inter alia*, increase the maximum fine for money laundering offences from $200,000 to a maximum of $500,000 for individuals, and a maximum of $1 million for such offences committed by institutions or corporations. MAS supports these strong measures to deter those who would seek to abuse Singapore's financial system.
>
> In alignment with the increase in CDSA penalties, the MAS Amendment Bill will increase the maximum penalty provided for in the MAS Act for breaches of directions or regulations giving effect to Singapore's United Nations obligations and for the prevention of money laundering or terrorist financing, from $100,000 to $1 million.
>
> [emphasis added in italics and bold italics]

33 From the extracts in [32] above, it is clear that the specific aim of s 27B was to address the dangers posed to global markets by money laundering and terrorism financing, and to safeguard the reputation and integrity of Singapore as a global financial hub and that of its financial institutions. Left unchecked, such illicit activity would "injure the reputations of financial institutions, erode the integrity of financial markets, and weaken the resilience of the global economy".

34 To address these concerns, s 27B(1A)(*a*) provides that directions may be issued by the MAS that "may provide for customer due diligence measures to be conducted by financial institutions to prevent money laundering and the financing of terrorism". This brings me to the Notice.

35 Pursuant to s 27B of the Act, the first iteration of the Notice was issued on 2 July 2007. The Notice is titled "Prevention of Money Laundering and Countering the Financing of Terrorism – Banks". The title speaks unequivocally to its purpose. The underlying principles set out in paragraph 3 of the Notice emphasise the precautions that banks must take to guard against money laundering or terrorism financing. Paragraph 3.1(b) of the Notice is pertinent and provides that:

> A bank shall conduct its business in conformity with high ethical standards, and guard against establishing any business relations or undertaking any transaction, that is or may be connected with or may facilitate money laundering or terrorism financing.

36 The MAS webpage, which contains a link to the Notice, also provides the following overview:

> Financial institutions operating in Singapore are required to put in place *robust controls* to detect and deter the flow of illicit funds through Singapore's financial system.
>
> *Such controls include the need for financial institutions to identify and know their customers (including beneficial owners)*, to conduct regular account reviews, and to monitor and report any suspicious transaction.
>
> [emphasis added]

37 Financial institutions were therefore required to "put in place *robust control measures* to detect and deter the flow of illicit funds" through their system. The CDD process was a key part of that as provided for in s 27B(1A)(*a*) of the Act. The MAS website amplifies this by stating that "*such controls*

include the need for financial institutions to identify and know their customers (including beneficial owners)".

38 Accordingly, pursuant to directions issued by the MAS, banks are required to undertake the CDD process to identify and ascertain who their customers are. This would necessarily include the UBOs behind the customers. In other words, banks *must* conduct the requisite CDD process or risk the sanctions under s 27B(2) of the Act highlighted at [31] above. These robust provisions reflect the seriousness with which Parliament sought to address the dangers posed by money laundering and terrorism financing to, *inter alia*, Singapore and its financial institutions. This only serves to underscore the importance of the CDD process and KYC obligation that was imposed on banks.

39 The Notice also provided for the specific control measures that banks are required to take. Paragraph 6.14 of the Notice is salient and I reproduce it below:

> Where there is one or more beneficial owner in relation to a customer, the *bank shall identify the beneficial owners* and take reasonable measures to *verify the identities of the beneficial owners* using the relevant information or data obtained from reliable, independent sources ...
>
> [emphasis added]

40 I find it significant that paragraph 6.14 appears under the header "Identification and Verification of Identity of Beneficial Owner" within the Notice. Paragraph 6.14(a) goes on to provide a comprehensive series of investigative steps that banks would have to take to identify the natural persons who ultimately own the customer, if the customer is a legal person (which is so in the present case). Indeed, the entire architecture of paragraphs 4 to 15 of the Notice emphasises the importance of identifying and verifying the identity of

the customer including the UBO, with additional and more stringent CDD requirements imposed where the customer fits a certain profile.

41 Having set out in detail the intent of the Notice and s 27B of the Act and the obligations imposed therein, I turn now to address the appellants' submissions that the untruthfulness of the Declarations was unlikely to cause harm to the reputation of the Banks.

42 It is evident from the extract of the speech made in Parliament reproduced at [32] above that failure by financial institutions to detect and deter money laundering and terrorism financing carries the distinct likelihood of, *inter alia*, injury to their reputation. It is axiomatic that if the measures that financial institutions introduced pursuant to the Notice were circumvented, the likelihood of the financial institutions suffering reputational damage would be heightened.

43 The Declaration was introduced by the Banks in an effort to comply with the specific requirement in the Notice to identify and verify the UBO: see [39] above. It was therefore crucial to the CDD process and *a necessary step prior to the opening of an account*. The bank officers of the Banks testified that prior to the opening of any account, the protocol was that the Declaration would be used to ascertain and verify the UBO's identity. A series of checks on the Banks' internal platform for any adverse report would be performed: GD at [17]. The bank officers confirmed that the internal checks were carried out because of the risk of money laundering. They further testified that the Banks would not open an account if the person opening it was not the UBO, as they would not be able to identify and verify the identity of the UBO as required by paragraph 6.14 of the Notice. The importance of the Declaration to the Banks is clear in the stipulation stated in the account opening form: see [7] above.

44 Accordingly, a truthful UBO declaration was a pre-requisite to mitigating the risk of the Banks' system being used for money laundering and terrorism financing. Mitigation of the risk of illicit activities in turn mitigated the likelihood of risk of reputational harm to the Banks. A false Declaration therefore served as a significant if not insuperable stumbling block to the efficacy of the internal UBO checks that the Banks carried out, increasing the risk of their system being abused by illicit activities and the likelihood of reputational harm. Ms Sharon Low from Maybank testified that the failure to identify and verify the true UBO would result in a "reputational risk to the bank" as it would not want to be seen as a bank that would "just open any accounts without finding out the true owners of the company". Ms Tan Yi Hui from OCBC similarly testified that the impact of a false Declaration, would be "reputational risk" to the bank for potentially being "associated with … money-laundering or … fraud case[s]".

45 By falsely declaring the UBO in the Declarations, Andruew defeated the object of s 27B of the Act and the purpose of the measures required by paragraph 6.14 of the Notice and all the consequential provisions that followed. The Banks were deceived into believing that Andruew was the UBO, and were thereby induced to open the Bank Accounts. This increased the very risk that the Notice and the Declaration were designed to mitigate, which in turn increased the likelihood of risk of reputational harm to the Banks.

46 For these reasons, I found the first argument to be without merit.

The truthfulness of the Declarations at the time when the Bank Accounts were opened

47 The second argument raised by the appellants was that the Declarations were in fact truthful, *ie*, that Andruew was the UBO at the time the Bank

Accounts were opened.

48 This argument was unsustainable on the facts and rightly rejected by the Judge. Having considered the CPIB statements of the appellants and their evidence at trial, it was clear to me that Andruew did not have any substantive ownership rights over the accounts. Instead, Andruew could only act on Vadim's instructions (conveyed by Vadim from MEA's clients) and was not in a position to proceed on his own. This was a finding of fact by the Judge that I noted at [16] above. Moreover, both appellants also appreciated the distinction between Andruew's role as the nominee director and that of the true UBO. The following extracts from the appellants' statements make this clear:

> **Vadim's 1 August 2019 CPIB statement**
>
> 49 The accounts opened are usually current accounts. The cheque books will be sent by the banks to the companies' registered address. Me or my staff from MEA Business Solutions would go to the registered address at 10 Anson Road to collect the cheque books. *The nominee directors do not collect the cheque books. I would be the one safekeeping the cheque books either at my office or at home. I do not use it and I do not allow the nominee directors to use it.* …
>
> 50 Similarly, for the internet banking tokens, me or my staff form [*sic*] MEA Business Solutions would go to the registered address at 10 Anson Road to collect. We will then mail the tokens to the beneficial owners via DHL or Singpost … The nominee directors do not have access to the tokens. *They are also not allowed to use the tokens. The same applies for me. I do not use the tokens. I should not use it because the monies do not belong to me, since I'm just a nominee director and I do not run the business.*
>
> [emphasis added]
>
> **Andruew's 1 August 2019 CPIB statement**
>
> 29 … I wish to confirm that *I have declared to the bank as the ultimate beneficiary owner (UBO) of Evoque Capital Corp Pte Ltd, even though I was only the nominee director of the company. The bank would have the impression that I was the one who run the company, when in fact it is not the case. I also confirm that I did not inform the bank of the actual UBOs of the company.* …

[emphasis added]

49 I thus found that Andruew was not the UBO at the time the Bank Accounts were opened. The Declarations were therefore not true.

The evidence of a conspiracy between the appellants

50 The third and final argument was that there was no specific or direct evidence of a conspiracy between the appellants.

51 This argument was not pursued with much vigour in oral submissions, and I did not consider it to be a meritorious submission in any event. A conspiracy need not be proven by direct evidence of an agreement between conspirators. Indirect evidence through the words and actions of the parties that "giv[e] rise to the inference that their actions must have been co-ordinated by arrangement beforehand" is sufficient: *Public Prosecutor v Yeo Choon Poh* [1993] 3 SLR(R) 302 at [20].

52 In concluding that a conspiracy existed, the Judge considered the following points:

(a) First, Andruew acted on the instructions of Vadim at all times: GD at [95]. I note that this is consistent with the Judge's observation that Andruew conceded in cross-examination that he could not perform any transaction in relation to the Bank Accounts without first asking Vadim: GD at [68].

(b) Second, the appellants gave "strikingly similar reasons" in justifying why they declared themselves to be the beneficial owners of the Bank Accounts in their CPIB statements: GD at [99]–[104].

(c) Third, Andruew acknowledged in cross-examination that it was "a possibility" that the striking similarity in the justifications given by himself and Vadim was due to conversations he had with Vadim: GD at [105]. Vadim had also conceded in cross-examination that Andruew's similar justification for declaring himself the UBO was "most likely" because Vadim had briefed and instructed him on the same.

(d) Fourth, Vadim acknowledged in cross-examination that he had coached Andruew on how to present himself and answer the questions that would be posed to him by the bank officers when opening the Bank Accounts: GD at [107].

53 When viewed together, the evidence was clear that the appellants had acted in concert to deceive the Banks into opening the Bank Accounts. There was therefore no basis for appellate intervention.

54 On the basis of the foregoing, I dismissed the appeals against conviction.

Issue 2: Sentence

55 The appellants were content to rely on their written submissions in relation to their appeals against sentence. I found the appeals similarly without merit. I make three points.

56 First, I found that the Judge correctly relied on *Idya Nurhazlyn* in observing that deterrence was the primary sentencing consideration. In their written submissions, the appellants attempted to distinguish *Idya Nurhazlyn* on the basis that a bank account is not a financial instrument and thus the need for deterrence stated in *Idya Nurhazlyn* is not present here. The appellants missed the point. The need for deterrence in *Idya Nurhazlyn* arose not only because a

financial instrument was abused, but also because the *consequence* of such abuse was the eroding of confidence in the financial system and the undermining of the conduct of legitimate commerce: *Idya Nurhazlyn* at [48]–[49]. It is trite that the principle of general deterrence would apply to offences which affected "the delivery of financial services and/or the integrity of the economic infrastructure": *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [24(e)]. V K Rajah J (as he then was) summarised the position thus, at [24(e)] of *Law Aik Meng*:

> … *The public interest vested in a secure and reliable financial system that facilitates convenient commercial transactions is extraordinary, especially in light of Singapore's reputation as an internationally respected financial, commercial and investment hub.* Yet another instance of such an offence surfaced in the recent case of *PP v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 ("*Payagala*"), where the appellant made fraudulent purchases with a misappropriated credit card. In imposing a deterrent sentence, I made the following observations at [88]:
>
> > … *Such offences, if left unchecked, would be akin to a slow drip of a subtle but potent poison that will inexorably and irremediably damage Singapore's standing both as a financial hub as well as a preferred centre of commerce.* …
>
> The courts will take an uncompromising stance in meting out severe sentences to offences in this category.
>
> [emphasis added]

Notably, similar concerns and considerations were stated by Parliament when s 27B of the Act was enacted, as highlighted in the extracts of the speech reproduced at [32] above.

57 Second, the Judge was correct to rely on the unreported decisions in *Public Prosecutor v Phee Sim Gek* (DAC-934381-2019 and others, unreported) ("*Phee Sim Gek*") and *Public Prosecutor v Seet Mei Siah* (DAC-934378-2019 and others, unreported) ("*Seet Mei Siah*") in establishing the starting point for

the appellants' sentences. I accept that as a general proposition, unreported cases have limited precedential value because the facts and circumstances would usually not be documented with sufficient detail to enable meaningful comparisons to be made: *Tay Kim Kuan v Public Prosecutor* [2001] 2 SLR(R) 876 at [6]. Moreover, unreported decisions have no written grounds that set out the reasons why the sentences were imposed: *Luong Thi Trang Hoang Kathleen v Public Prosecutor* [2010] 1 SLR 707 at [21].

58 However, these shortcomings do not apply to the two decisions the Judge relied on. The decisions in *Phee Sim Gek* and *Seet Mei Siah* relate to two individuals that were also recruited by Vadim to act as nominee directors and who had also admitted to making UBO declarations that were false in procuring the opening of bank accounts. The facts of those decisions are therefore very similar to the present matters and were rightly used by the Judge when he applied the principle of parity of sentencing to calibrate the starting point of the sentences imposed on the appellants: *Public Prosecutor v Ramlee and another action* [1998] 3 SLR(R) 95 at [7].

59 Third, I saw no reason to disagree with the Judge's conclusion that there were no exceptional mitigating factors. It is well established that hardship by way of financial loss occasioned by imprisonment is not a relevant mitigating factor because it is a consequence of the offender's own acts: *Tay Boon Sien v Public Prosecutor* [1998] 2 SLR(R) 39 at [16]. Accordingly, any loss of income that the appellants suffered or would suffer as a result of the criminal proceedings did not have any mitigating value. Vadim's further argument on his loss of freedom from not being able to visit his family in Russia was similarly without merit. Vadim was only prohibited from leaving Singapore and was not in any way detained in his residence. Therefore, the only loss of freedom that Vadim could in any way be said to have suffered was his inability to leave

Singapore. The argument that there was any mitigating value in this was specifically considered and rejected in *Public Prosecutor v Thompson, Matthew* [2018] 5 SLR 1108. See Kee Oon J observed at [74] that:

> … In any event, the fact that the respondent was not allowed to leave the jurisdiction is the normal and unexceptional consequence of the determination of him as a flight risk. It is the conventional operation of the bail regime that a foreigner with no strong ties to the jurisdiction is more easily found to be a flight risk than a Singapore citizen. The regime is not deliberately designed to inflict more hardship on a foreign citizen as compared to a Singapore resident. Instead, it aims to secure the alleged offender's presence in court at the trial. *There is no mitigating value to be attributed to the respondent's prolonged stay in Singapore while out on bail.*
>
> [emphasis added]

60 For these reasons, I found that the Judge did not err in imposing global sentences of two weeks' and four weeks' imprisonment on Andruew and Vadim respectively. I therefore dismissed the appellants' appeal against their sentence as well.

Conclusion

61 There is a strong public interest in protecting Singapore's reputation as an internationally respected financial, commercial and investment hub from abuse. The banking system is one of the lynchpins of Singapore's economic and financial infrastructure and must be guarded against irresponsible or insidious actors that seek to undermine Singapore's reputation as a centre for legitimate commercial and financial activity.

62 While both appellants have maintained that no actual harm was caused to the Banks, as noted earlier at [29], actual harm is not the element of the charge. It is the likelihood of harm that is salient. In any case, the appellants have failed to appreciate that their actions have compromised the safeguards put

in place by financial institutions pursuant to directions issued by the MAS under s 27B of the Act. By making the Declarations that were patently false, they have trivialised the CDD process and exposed the Banks to the risk of their systems being abused by actors involved in money laundering and terrorism financing, and the likelihood of suffering reputational harm.

63 I therefore dismissed the appeals against conviction and sentence.

Kannan Ramesh
Judge of the High Court

Akesh Abhilash (Harry Elias Partnership LLP) for the first appellant;
The second appellant in person;
Peter Koy Su Hua, Charis Low Jia Ying, Gan Ee Kiat (Attorney-General's Chambers) for the respondent.