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

[2022] SGHC 204

Magistrate's Appeal No 9082 of 2022

Between

Woo Haw Ming

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Sentencing — Appeals]

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Woo Haw Ming
v
Public Prosecutor

[2022] SGHC 204

General Division of the High Court — Magistrate's Appeal No 9082 of 2022
Vincent Hoong J
12 August 2022

25 August 2022 .

Vincent Hoong J:

1 The appellant, Woo Haw Ming, pleaded guilty to two charges under s 420 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") ("the First Charge" and "the Second Charge" respectively). Two other charges, also preferred under s 420 of the Penal Code, were taken into consideration ("TIC") for the purpose of sentencing ("the TIC Charges"). Broadly, these charges pertain to the appellant entering into tenancy agreements with landlords without the intention of residing in the corresponding properties. Instead, they were used as brothels.

2 The District Judge ("DJ") sentenced the appellant to three months' imprisonment per charge and ordered both sentences to run concurrently. I dismissed the appellant's appeal against his sentence as I found that the

sentences were not manifestly excessive. I provided brief oral grounds at the hearing and now set out detailed grounds of my decision.

Background facts

3 The appellant was imprisoned for an unrelated offence between July and September 2018. Therein, he became acquainted with one Eric. Upon his release from incarceration, the appellant informed Eric that he needed money. In turn, Eric offered him "easy money" in consideration of the appellant signing tenancy agreements for properties intended to house KTV workers. The appellant took up Eric's offer.[1]

4 Acting on Eric's instructions, the appellant contacted one Joanne, a property agent, and expressed his interest in renting an apartment ("the Unit"). He informed Joanne that he was in "the business of fitness equipment" and would be occupying the Unit with two co-tenants. The appellant obtained the NRIC of his two putative co-tenants from Eric and furnished these details to Joanne.[2]

5 On 31 January 2019, the appellant entered into a tenancy agreement with Mvjestic Holdings Pte Ltd ("the Landlord") in respect of the Unit ("the First Tenancy Agreement"). The First Tenancy Agreement spanned 12 months and stipulated that rent was payable at $3,200 per month. In entering the First Tenancy Agreement, the appellant deceived the Landlord into believing that (a) he, along with his co-tenants, would be tenants of the Unit; and (b) he would observe all the covenants of the First Tenancy Agreement, including not to use

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1 Statement of Facts ("SOF") at [2]–[3] (Record of Proceedings ("ROP") at p 6).

2 SOF at [4]–[6] (ROP at pp 6–7).

the Unit for any illegal purpose and not to part with possession of the Unit without the Landlord's written consent.[3]

6 Eric instructed the appellant to leave the keys to the Unit and the tenancy documents on a table in the Unit. The appellant complied and additionally, left the door to the Unit unlocked. Neither he nor his co-tenants occupied the Unit at any point in time. The appellant was paid $100 for performing the acts outlined at [4] to [6] (which formed the subject of the First Charge).[4]

7 Sometime before 4 December 2019, Eric instructed the appellant to renew the First Tenancy Agreement. The appellant thus entered into a second 12-month tenancy agreement with the Landlord, which began on 31 January 2020 at the prevailing rent of $3,200 ("the Second Tenancy Agreement"). Again, in so doing, the appellant deceived the Landlord into believing that, together with his co-tenants, he would occupy the Unit and observe the associated covenants.[5] The appellant was, however, not paid for his acts in relation to the Second Tenancy Agreement.[6]

8 Subsequently, on 26 December 2019, police officers raided the Unit and arrested three female subjects for offences under the Women's Charter (Cap 353, 2009 Rev Ed). These three female subjects admitted to soliciting sexual services online and providing sex for profit.[7]

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3 SOF at [7]–[9] (ROP at p 7).

4 SOF at [11] (ROP at p 8).

5 SOF at [13]–[14] (ROP at p 8).

6 SOF at [15] (ROP at p 8).

7 SOF at [18] (ROP at p 9).

The DJ's decision

9 In so far as there were no reported decisions dealing with offences under s 420 of the Penal Code involving fraudulent tenancies, the DJ approached sentencing from first principles and developed a two-stage, five-step sentencing framework with reference to *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 ("*Logachev*").[8] The DJ's grounds of decision can be found at *Public Prosecutor v Woo Haw Ming* [2022] SGDC 110.

10 At the first stage of her analysis, the DJ identified and itemised the offence-specific and offender-specific factors. Offence-specific factors that went towards harm included the "[f]rustration of government regulations", "[p]ublic policy considerations", "[d]ifficulty in detection" and the "[p]revalence of paper tenancy offences". Offence-specific factors that were relevant to an offender's culpability spanned an offender's knowledge of the illicit nature of "paper tenancies", the number of properties involved, the duration of offending and the offender's role. As for offender-specific factors, aggravating elements included offences that were TIC for the purpose of sentencing and an offender's history of offending while mitigating factors included a plea of guilt and co-operation with the authorities.[9]

11 In dealing with the offence-specific factors, the DJ noted that the appellant's offences: (a) frustrated the regulatory framework aimed at "polic[ing] the type of activities that [went] on at private residences behind closed doors" as well as the public interest in upholding public decency in the community; (b) were part of a "well-orchestrated operation"; (c) were difficult to detect; and (d) were an example of increasingly prevalent "paper tenancy

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8 GD at [32] (ROP at p 66).

9 GD at [33] (ROP at p 67).

offences".[10] The DJ also found that the appellant had some awareness that the Unit would be used for illegal activities. Whilst the Defence had submitted to the contrary, the DJ noted that the highly irregular tenancy agreements – including the fact that the appellant did not reside in the Unit despite being listed as an occupier – must have alerted the appellant to the fact that the Unit would likely be used for an illicit activity. Coupled with the fact that the appellant signed multiple rental agreements over 11 months, the DJ considered that the appellant's culpability "was not insignificant".[11]

12 Turning to the offender-specific factors, the DJ observed that two other similar charges under s 420 of the Penal Code were TIC for the purpose of sentencing. She placed mitigating weight on the appellant's plea of guilt and his co-operation with the authorities.[12]

13 For completeness, the DJ considered that two of the cases the Prosecution cited (which involved harm that was "not easily quantifiable"), namely *Public Prosecutor v Mikhy K Farrera Brochez* [2017] SGDC 92 ("*Mikhy*") and *Dong Guitian v Public Prosecutor* [2004] 3 SLR(R) 34 ("*Dong*"), provided guidance in ascribing a value to the offence-specific factor concerning the frustration of government policy and regulations and in arriving at an indicative sentence in the present case.[13] Contrastingly, she placed no weight on the unreported cases the Defence cited.[14]

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10 GD at [35]–[40] (ROP at pp 68–70).

11 GD at [41]–[47] (ROP at pp 70–72).

12 GD at [48]–[54] (ROP at pp 72–74).

13 GD at [57]–[59] (ROP at pp 74–76).

14 GD at [60]–[70] (ROP at pp 76–79).

14 In the final analysis, the DJ placed both the level of harm disclosed and the appellant's culpability "at the higher end of the low band".[15] She considered that a sentence of up to six months imprisonment was appropriate for a case involving low harm and low culpability but arrived at a final sentence of three months' imprisonment per proceeded charge after balancing the aforesaid offence-specific and offender-specific factors.[16] The DJ ordered the sentences to run concurrently as they "arose from the same set of facts".[17]

The parties' submissions

The appellant's submissions

15 The appellant submitted that the DJ erred in law and/or fact in four respects. First, the DJ accorded excessive weight to the offence-specific factors that were relevant to the harm occasioned by the appellant's offences. In particular, there was no basis for the DJ to find that sham tenancies frustrate government regulations (given that there are no government agencies regulating tenancy agreements) or were prevalent. Moreover, the financial harm caused to landlords by sham tenancies is mitigated by a landlord's recourse to the rental deposit. Sham tenancies also do not require elaborate planning.[18]

16 Second, the DJ accorded excessive weight to the offence-specific factors that went towards the appellant's culpability. Pertinently, the DJ had no basis to infer that the appellant had some awareness that the Unit would be used for illegal activities or to find that the appellant's offending conduct permeated 11

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15 GD at [55] (ROP at p 74).

16 GD at [71] (ROP at p 79); GD at [72]–[75] (ROP at pp 79–81).

17 GD at [75] (ROP at p 80).

18 Appellant's Submissions dated 2 August 2022 ("AS") at [29]–[43].

months when the appellant had signed three sham tenancy agreements within three weeks and renewed one of these agreements 11 months later.[19]

17 Third, the DJ offended the rule against double counting by both treating the charges TIC for the purpose of sentencing as an offence-specific factor relevant to the offender's culpability and a separate aggravating factor.[20]

18 Fourth, the DJ placed undue weight on *Mikhy* and *Dong*. *Mikhy* and *Dong* can be distinguished as they involve the frustration of governmental regulations which caused palpable harm. There was no evidence presently that government regulations were frustrated, and any harm caused by the appellant's actions was mitigated by the Landlord's recourse to the rental deposits.[21]

19 Following from the above, and with reference to various unreported precedents, the appellant submitted that a sentence of six weeks' imprisonment per proceeded charge was fair and just.[22]

The respondent's submissions

20 The respondent submitted as follows. The factors that the DJ considered in assessing the harm occasioned by the appellant's offences were valid. Fraudulent tenancies have serious and wider repercussions on society; they frustrate governmental interest in holding tenants accountable for actions that take place within rented premises. Moreover, it was reasonable for the DJ to find that there was a sophisticated and well-orchestrated operation undergirding

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19 AS at [44]–[50].

20 AS at [51]–[54].

21 AS at [55]–[57].

22 AS at [58]–[78].

the appellant's offences. The appellant entered into the fraudulent tenancies on behalf of Eric (who communicated with the appellant at arm's length), the tenancies were monitored and renewed before they fell due, and females were subsequently recruited to run the vice operations.[23]

21 Likewise, the factors that the DJ had regard to in calibrating the culpability of the appellant were valid. The DJ correctly held that the suspicious circumstances of the transactions must have alerted the appellant that something illicit was being planned. The appellant had been asked to sign the agreements for no reason, had not been given a reason why Eric could not sign the agreements, was paid money for signing the agreements, was listed as the occupier of the Unit despite having no intention to reside in the Unit and had been told to leave the keys to the unit and the tenancy agreement in the Unit. In this regard, *Chang Kar Meng v Public Prosecutor* [2017] 2 SLR 68 ("*Chang Kar Meng*") is authority for the proposition that a court can draw inferences in determining the relevant factual matrix for sentencing purposes, so long as there is a sufficient factual basis to support the inference.[24]

22 In a similar vein, the DJ did not find that the appellant's offending behaviour persisted for 11 months but that it persisted when the opportunity presented itself 11 months later. In any event, while the appellant first signed the tenancy agreements in January 2019, the effect of his deception and any vice-related activities permeated the entire duration of the tenancy.[25]

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23 Respondent's Submissions dated 2 August 2022 ("RS") at [17]–[26].

24 RS at [27]–[30].

25 RS at [33].

23 Next, the DJ did not err in having regard to *Mikhy* and *Dong*. While neither *Mikhy* nor *Dong* involved facts similar to the present case, they show that "non-financial harm that has a wider public policy impact is a relevant aggravating factor in sentencing". In other words, the non-financial, societal consequences of an offender's deception must be considered in calibrating the appropriate sentence to be imposed.[26]

24 Finally, the DJ did not offend the rule against double counting. The DJ was justified in considering the fact that the appellant had signed multiple tenancy agreements in assessing his culpability and in treating his TIC charges as an offender-specific aggravating factor.[27]

My decision

Preliminary observations

25 To begin, although parties understandably sought to justify their respective positions with reference to the DJ's sentencing framework (which she modelled after the framework set out in *Logachev*), I had my reservations on whether offences under s 420 of the Penal Code involving fraudulent tenancies lend themselves well to a sentencing framework modelled after *Logachev*. The two-stage, five-step *Logachev* sentencing framework eschews a focus on the principal factual elements of the cases and instead employs at the first step, a general holistic assessment of the seriousness of the offence by reference to *all* the offence-specific factors rather than the principal factual elements. These offence-specific factors can be in turn broken down into factors that go towards the offender's culpability and the harm caused by the offender's

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[26] RS at [34]–[38].

[27] RS at [39]–[42].

actions. Thereafter, the court identifies the applicable indicative sentencing range within the sentencing matrix based on the level of harm and culpability disclosed, locates the appropriate indicative starting point within that range, makes adjustments to the indicative starting point by considering offender-specific factors and makes further adjustments (if any) to the sentence to take into account the totality principle (*Logachev* at [75]–[84]).

26 As I observed in *Sue Chang v Public Prosecutor* [2022] SGHC 176, however, the *Logachev* sentencing approach combines the granularity of a sentencing matrix model with the holistic nature of the sentencing of the sentencing bands approach. It may thus be better suited for offences where a broad range of outcomes may arise under the specific axes of harm or culpability (at [64]). Thus, in *Ye Lin Myint v Public Prosecutor* [2019] 5 SLR 1005, one of the reasons the High Court considered that a *Logachev* sentencing framework could aptly govern offences under s 507 of the Penal Code, which concerns criminal intimidation by an anonymous communication, was that such a framework "would more fully capture the wide diversity of acts punishable under s 507 [of the Penal Code]" (at [46]). The difficulty with fashioning a sentencing framework with reference to *Logachev* to deal with fraudulent tenancies is that these offences tend to manifest in a particular manner, *viz*, an offender deceives a landlord into believing that he intends to reside in the property when he possesses no such intention and where the property is then used for other, often nefarious, purposes. Any variation amongst offences involving fraudulent tenancies, for instance in the eventual use of the property or an offender's role in the criminal enterprise, is not – at least, presently – so wide that it demands a general holistic assessment of the seriousness of the offence in the spirit of *Logachev*.

27 Additionally, I also found the particulars of the DJ's proposed sentencing framework to be doctrinally suspect. For instance, apart from noting that the court ought to utilise the full range sentencing range prescribed by Parliament, the DJ provided no explanation for her determination that a sentence of up to six months imprisonment was appropriate for an offence disclosing low harm and low culpability.[28] It was not self-evident or intuitive that this should be the indicative sentencing range, especially when the maximum punishment for an offence under s 420 of the Penal Code (ten years' imprisonment) was brought to bear upon the analysis. In a similar vein, I did not agree that "[p]ublic policy considerations", "[d]ifficulty in detection" and the "[p]revalence of paper tenancy offences" were offence-specific factors that went towards harm.[29] These considerations did not pertain to the manner and mode by which an offence is committed (see *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [39(a)]).

28 In my view, there is some merit in establishing a presumptive sentence for offenders who enter into fraudulent tenancies. This would ensure consistency in sentencing while maintaining an appropriate level of flexibility and discretion for sentencing courts. To this extent, the single starting point approach (which calls for the identification of a notional starting point which will then be adjusted to take into account any aggravating or mitigating factors) and the benchmark approach (which provides the focal point against which sentences in subsequent cases can be determined) warrant serious consideration; both approaches are "particularly suited for offences which overwhelmingly manifest in a particular way" (*Terence Ng* at [23], [27]–[28], [31]–[32]).

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[28] GD at [71] (ROP at p 79).

[29] GD at [33] (ROP at p 67).

Nevertheless, as parties did not submit on this issue, I left it for consideration on another occasion.

29 Before I deal with whether the sentences meted out by the DJ were manifestly excessive, I make one other observation. In the proceedings below and before me, counsel for the appellant, Mr Markandu, suggested that some weight could be accorded to unreported precedents in so far as they offer a "useful point of reference" in the court's final determination of whether a sentence is just and fair.[30] I found that there was limited utility in this exercise. It is trite that unreported decisions lack sufficient particulars to paint the entire factual landscape required to appreciate the precise sentences imposed (*Abdul Aziz bin Mohamed Hanib v Public Prosecutor and other appeals* [2022] SGHC 101 at [173]). The reason for placing little, if any, weight on unreported precedents – namely, that they are unreasoned, and it is therefore not possible to discern what had weighed on the mind of the sentencing judge (*Janardana Jayasankarr v Public Prosecutor* [2016] 4 SLR 1288 at [13(b)]) – suggests that they cannot meaningfully serve even the limited function Mr Markandu sought.

The appeal against sentence

30 Turning to the appeal against sentence, I found there to be insufficient grounds to intervene with either the individual or global sentence imposed. Before me, Mr Markandu submitted that there was nothing in the Statement of Facts to ground the DJ's inference that the appellant had knowledge that the premises would be used for vice-related activities.[31] Mr Markandu further referred me to the Notes of Evidence ("NE") of the proceedings below wherein the Prosecution purportedly conceded that the appellant's knowledge that Eric

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30 AS at [73]–[77].

31 AS at [28], [45]–[47].

had allowed multiple women to reside in the property (or lack thereof) was not relevant to his culpability. I did not find that the DJ so erred. Reading the salient portions of the NE in context,[32] I found that the Prosecution merely conceded that whether the appellant knew that Eric operated within a broader syndicate was not relevant to the appellant's culpability. This was, however, qualitatively distinct from the question of whether the appellant knew that the Unit would be exploited for vice. In this regard, while "[t]he charges and the statement of facts constitute the four corners of the case" against a person who pleads guilty (*Public Prosecutor v Development 26 Pte Ltd* [2015] 1 SLR 309 at [16]), I accepted that a court may draw inferences from undisputed facts in determining the relevant factual matrix for sentencing purposes (*Chang Kar Meng* at [38]–[39]). That the appellant signed the First and Second Tenancy Agreements with no intention to reside in the premises, did so for $100 under the instructions of Eric (who did not account for why he could not have signed the agreement himself) and was instructed to leave the keys and the tenancy agreement in the Unit (with the Unit unlocked) grounded the ineluctable inference that he knew the Unit would be used for illicit activities.

31 Next, I found the appellant's arguments that there was no basis for the DJ to assert that sham tenancies frustrate government regulations or that the Landlord suffered limited loss because he had recourse to the rental deposit to be misplaced.[33] Both contentions were united by a myopic view of the harm occasioned by the appellant's conduct (and, at a more general level, by fraudulent tenancies). To construe the harm caused as being confined to the Landlord's pecuniary loss unjustifiably elides any consideration of the fact that the Landlord did not consent to having his property exploited for vice.

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32 ROP at pp 38–40.

33 AS at [34]–[35], [49].

Furthermore, due weight must be accorded to the fact that the appellant facilitated the provision of unregulated sexual services and introduced (presently, unbridged) distance between law enforcement authorities and the perpetrators of the broader illicit scheme such as Eric. The private, contractual nature of the tenancy agreements did not detract from the clear public interest in deterring the proliferation of such fraudulent tenancies.

32 I was likewise unable to accept the appellant's contention that the DJ erred in having regard to *Mikhy* and *Dong*, which the Prosecution contended (in proceedings below) were instructive in so far as they also concerned offenders who perpetrated deception "aimed at circumventing government regulations" and where the harm occasioned pertained to the "subver[sion of] the proper operation of the [said] regulations".[34] *Mikhy* involved an offender who committed, *inter alia*, an offence under s 420 of the Penal Code by submitting a falsified HIV blood test to the Ministry of Manpower ("MOM"), and thereby obtained an Employment Pass. For this offence, he was sentenced to 12 months' imprisonment.[35] *Dong* concerned a director of a construction company who successfully submitted two false applications to the MOM to obtain approval for the recruitment of workers from the People's Republic of China. He was charged with two offences under s 420 of the Penal Code and sentenced to six months' imprisonment per charge. The sentences meted out in *Mikhy* and *Dong* were upheld on appeal.[36]

33 At this juncture, I pause to mention that the Prosecution's reliance on *Mikhy* and *Dong* (as well as Mr Markandu's reliance on unreported precedents)

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34 GD at [57] (ROP at p 74).

35 AS at [32]; RS at [36(b)].

36 HC/MA 9071/2017/01; *Dong Guitian v Public Prosecutor* [2004] 3 SLR(R) 34.

throws the paucity of reasoned decisions dealing with fraudulent tenancies into sharp relief. This might bolster the case for the promulgation of a presumptive sentence or a sentencing framework to deal with offences under s 420 of the Penal Code involving fraudulent tenancies (see [28] above and *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 at [32]).

34 Returning to the appellant's submission, while there was force in the contention that *Mikhy* and *Dong* were not directly analogous precedents, involving, as they did, the frustration of manpower policy, the manner and context in which the DJ had regard to *Mikhy* and *Dong* had to be borne in mind. More specifically, the DJ considered that *Mikhy* and *Dong* were cases disclosing harm that was not "easily quantifiable" and thus provided "important indicators for arriving at a starting sentence in [the present] case".[37] I found no reason to interfere with this. Even if *Mikhy* and *Dong* involved deception in different contexts, the DJ was entitled to consider these two cases as guides to ensure that the sentences she imposed on the appellant were sufficient and proportionate to his overall criminality. This is consistent with the principle of cardinal proportionality which demands that the ultimate sentence meted out by any court must adequately reflect the relative seriousness of the present offence as against the full range of possible offences under the relevant statutory provision (*Public Prosecutor v Tan Thian Earn* [2016] 3 SLR 269 at [37], [40]).

35 Finally, I deal with the appellant's submission that the DJ transgressed the rule against double counting by treating the TIC Charges both as an offence-specific factor relevant to the appellant's culpability and as an independent aggravating factor.[38] The central concern of the rule against double counting is

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37 GD at [58] (ROP at pp 75–76).

38 AS at [51]–[54].

that a sentencing factor should be given only its due weight in the sentencing analysis and nothing more (*Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen*") at [98(d)]). This is, however, not to say that a sentencing factor must be considered in silo or invariably only has relevance at one stage of the sentencing exercise. Rather, the rule against double counting prohibits a court from attributing weight to a sentencing factor where this "has already been *fully factored* into the sentencing equation" [emphasis added] (*ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 ("*ADF*") at [92]). I accorded a degree of deference to the DJ and declined to intervene with the sentences imposed merely because she made repeated mention of the appellant's TIC Charges. As explained in *Raveen*, the due weight to be accorded to a sentencing factor (which does not form the basis of a charge framed against the offender or of a statutorily enhanced sentence) entails a degree of judgment and the mere fact that a sentencing factor is mentioned in separate parts of a decision should not, without more, be taken to constitute double counting (at [91]). To hold otherwise would imbue sentencing with an overly formalistic character when "[t]he sentencing process is not – and ought not to be – a mechanistic one" (*ADF* at [218]).

36 In the final analysis, the threshold for appellate intervention was not met and I thus dismissed the appeal. In coming to my decision, I agreed with the respondent that the appellant committing the offences shortly after being released from custody and the difficulty in detecting fraudulent tenancies drew considerations of specific and general deterrence to the forefront of the sentencing calculus (*Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [21], [25(d)]).

Vincent Hoong
Judge of the High Court

Asoka Markandu (Anitha & Asoka LLC) for the appellant;
Deputy Attorney-General Tai Wei Shyong, Norine Tan and Timothy Ong (Attorney-General's Chambers) for the respondent.