Chua Li Hoon Matilda and Others v Public Prosecutor
[2009] SGHC 116

Case Number : MA 253/2007, 254/2007, 255/2007

Decision Date : 15 May 2009

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Cheah Kok Lim (Sng & Company) for the first appellant/respondent; Philip Fong and Khaleel Namazie (Harry Elias Partnership) for the second and third appellants/respondents; David Khoo, David Chew Siong Tai and Diane Tan (Deputy Public Prosecutors) for the respondent/appellant

Parties : Chua Li Hoon Matilda; Seah Chin Yew; Seah Say Yoong — Public Prosecutor

Criminal Law

15 May 2009 Judgment reserved.

Choo Han Teck J:

1 Matilda Chua Li Hoon ("the First Appellant") was charged and tried with one count (DAC 43704/2006) of creating a false or misleading appearance of the price of WizOffice.com ("WizOffice") shares, an offence under s 97(1) of the Securities Industry Act (Cap 289, 1985 Rev Ed) and punishable under s 104 of that Act with a fine not exceeding $250,000 or imprisonment for a term not exceeding seven years or both, and two counts (DAC 15729/2006 and DAC 15730/2006) of falsifying the books of Global Net Relations ("GNR"), an offence punishable under s 477A of the Penal Code (Cap 224, 1985 Rev Ed) with a fine or imprisonment for a term not exceeding seven years or both. Seah Chin Yew ("the Second Appellant") was charged and tried with one count (DAC 43705/2006) of creating a false or misleading appearance of the price of WizOffice shares, an offence under s 97(1) of the Securities Industry Act and punishable under s 104 of that Act, and two counts (DAC 43702/2006 and DAC 43703/2006) of abetting the First Appellant to falsify GNR's books, an offence punishable under s 477A read with s 109 of the Penal Code. Seah Say Yoong ("the Third Appellant") was charged and tried with one count (DAC 43706/2006) of creating a false or misleading appearance of the price of WizOffice shares, an offence under s 97(1) of the Securities Industry Act and punishable under s 104 of that Act, and one count (DAC 43701/2006) of abetting one Quek Suan Choo ("Quek"), an accounts clerk of Seah Holdings Pte Ltd ("SHPL"), to falsify the accounts of SHPL, an offence punishable under s 477A read with s 109 of the Penal Code.

2 At the end of the trial, the First Appellant was acquitted of creating a false or misleading appearance of the price of WizOffice shares (DAC 43704/2006) and one count of falsifying her company's books (DAC 15730/2006). She was convicted on the other charge of falsifying GNR's books, and was sentenced to a fine of $10,000 (DAC 15729/2006). The Second Appellant was acquitted on one count of abetting the First Appellant to falsify GNR's books (DAC 43702/2006) but was convicted on the charge of creating a false or misleading appearance of the price of WizOffice shares (DAC 43705/2006), and the other charge of abetting the First Appellant to falsify GNR's books (DAC 43703/2006). He was sentenced to a $150,000 fine for the former and a $10,000 fine for the latter. The Third Appellant was acquitted of abetting Quek to falsify the accounts of SHPL (DAC 43701/2006) but was convicted of creating a false or misleading appearance of the price of WizOffice shares (DAC 43706/2006). He was sentenced to a $150,000 fine. The reasons for the acquittals and the convictions were set out in the grounds of decision of the District Judge in *PP v*

Mathilda Chua Li Hoon [2008] SGDC 290 ("the Judgment"). The First Appellant, the Second Appellant and the Third Appellant have appealed against their convictions and sentences. The Public Prosecutor appealed against the acquittals and sentences.

3 The First Appellant was, at the material time, the managing director and shareholder of GNR. The other director of GNR was one TT Durai. The First Appellant, however, on her own evidence, managed GNR on a full-time basis. The Second Appellant was, at the material time, the managing director and majority shareholder of WizOffice and a former director of SHPL. The Third Appellant is the father of the Second Appellant, and was the managing director of SHPL, which was a family investment company. GNR had obtained 10 million WizOffice shares as a result of a share swap agreement dated 28 June 2001 between GNR and WizOffice, and the First Appellant urgently needed to liquidate these shares in order to raise funds for the operation of GNR. The Second Appellant subsequently brokered a deal between the First Appellant as managing director of GNR and the Third Appellant as managing director of SHPL for the sale and purchase of the WizOffice shares at a discounted price – the discount being $150,000. The arrangement was for GNR to privately pay this substantial discount to SHPL after GNR sold the shares to SHPL on the open market at the then market price of 4.5¢ per share. They did not use the conventional and legitimate method by way of a "married trade", that is, a transaction between two willing parties who agree on the share price and number of shares. The Second Appellant instructed a broker, one Kwek Sok Hoon ("Kwek"), to execute the share sale and purchase in two tranches of five million WizOffice shares on the open market at 4.5¢. Kwek was to enter a sell order followed by a buy order less than one minute later. The transaction took place on 18 December 2001 and resulted in a total of 9,875,000 WizOffice shares being bought by SHPL at 4.5¢. The remaining 125,000 shares were sold to third parties. The DPP submitted that a false or misleading appearance of the price of WizOffice.com shares was thus created in that the shares appeared to be traded at 4.5¢ per share on the open market when they were actually being traded at 3¢ per share.

4 Soon after the transaction, GNR paid SHPL the $150,000 discount in a circuitous route by way of a cheque signed by the First Appellant on 24 December 2001 in favour of the Second Appellant's girlfriend, one Yee Lee Fen ("Yee"), an air stewardess at the material time. In turn, she issued a blank cheque on 3 January 2002, the day after the cheque from GNR cleared, and gave it to the Second Appellant, who wrote in SHPL as payee on the cheque and handed the cheque over to SHPL. The payment to Yee was purportedly for advisory services rendered pursuant to an advisory agreement between Yee and GNR for the sale of the WizOffice shares ("the Advisory Agreement"), and it was initially recorded in the books of GNR as an "acquisition fee". (GNR's accountant confirmed that the Advisory Agreement had been used to substantiate the so-called "acquisition fee" (NE at p 22).) Subsequently, Yee signed an annulment agreement in regard to the Advisory Agreement. The $150,000 payment was then described as a repayment of a loan to GNR from the Second Appellant. The Prosecution submitted that the recording of the $150,000 payment, first, as a payment for advisory services, and subsequently, as a repayment of a loan, proves the defalcation of the accounts of GNR by the First Appellant and abetted by the Second Appellant. The $150,000 cheque was recorded in the books of SHPL by Quek as a repayment of a loan from the Second Appellant. The Prosecution submitted that the Third Appellant had abetted Quek in recording the $150,000 payment as such.

5 Turning first, to the offence of creating a false or misleading appearance of the price of securities, s 97(1) of the Securities Industry Act states:

> A person shall not create, or cause to be created, or do anything that is calculated to create, a false or misleading appearance of active trading in any securities on a securities exchange in Singapore or a false or misleading appearance with respect to the market for, or the price of, any

such securities.

6 For the offence to be made out, two elements can be derived from the clear wording of the provision. First, there must be a creation of a false or misleading appearance in regards to either the active trading in any securities on the stock exchange, or the market for, or the price, of securities. Second, it must be proved that the offender had the intention to create the false or misleading appearance.

7 On the evidence, a false or misleading appearance of the price of WizOffice shares was proved. The transaction that took place on 18 December 2001 resulted in WizOffice shares being falsely or misleadingly transacted at 4.5¢ when they were, in effect, being traded at much less. Counsel for the Second Appellant and the Third Appellant, Mr Phillip Fong, described the $150,000 as not being a discount as it was not received at the time of the transaction. In substance, however, it was clear that the $150,000 was a discount for the purchase of the WizOffice shares in question, such that their true sale price was less than the transaction it purported to be. This was all the more apparent from the fact that the cheque for $150,000 was issued by GNR on 24 December 2001 – less than a week from the day of the transaction. Mr Fong also submitted that the transaction in question had no impact on the fair market price of WizOffice shares. This submission, in my view, was misconceived. Had the true nature of the transaction been disclosed, it might have had some effect on the market price of WizOffice shares. The sale of the WizOffice shares at a lower price might have had a significant influence on the decisions of investors. The expert evidence for both parties was consistent with this view. (Indeed, it was evidence that even if a married trade had been carried out, the fact that a significant discount had been given might also have adversely affected the WizOffice share prices (NE at p 271).) Furthermore, the expert witnesses appear to have been *ad idem* on the fact that the practice of hiding discounts is simply unacceptable conduct (see, *eg*, NE at pp 603, 619–620).

8 The District Judge held that the Second Appellant instructed Kwek to carry out the sale and purchase of the WizOffice shares in question at the prevailing market rate without informing her about the discount (Judgment at [137]). Hence, the trades carried out by Kwek on the Second Appellant's instructions did not reflect the discount in the price for the shares in question (*ibid*). The Third Appellant, on the other hand, authorised the Second Appellant to purchase the WizOffice shares in question at the prevailing market price for SHPL, with the stipulation that a discount of $150,000 had to be given by the seller (*ibid*). These were findings of fact and there was no basis to question them. Accordingly, the Second Appellant and the Third Appellant had committed the *actus reus* of creation of a false or misleading appearance in regard to the price of securities.

9 The Second Appellant was experienced in share transactions. He did not tell Kwek about the discount (NE at pp 491–192) and he did not inquire about the possibility of a marriage trade despite having done one before (NE at p 451). Furthermore, the Third Appellant had admitted that they (*ie*, the Second Appellant and the Third Appellant) did not want the share price of WizOffice shares to drop as a result of the share transaction between GNR and SHPL (see statement to CPIB dated13 January 2006 at para 16). Mr Fong pointed out that the Second Appellant's evidence was that he heard from a few brokers that selling shares with a discount was permissible. But none of the brokers who had allegedly provided this information were called to testify as witnesses (NE at pp 487–488). On the whole, the evidence, in my view, indicated beyond a reasonable doubt that the Second Appellant wanted to conceal the discount from the public; in other words, he had the intention to create a false or misleading appearance with respect to the price of WizOffice's shares. I am satisfied that the Third Appellant also had the requisite *mens rea* as well, as the evidence adduced shows that he knew that the WizOffice shares in question were to be transacted at 4.5¢ with the discount to be given back as a rebate. He knew that this was done so as to prevent a plunge in the share price of

WizOffice shares, while allowing SHPL to obtain the discounted rate (see statement to CPIB dated13 January 2006 at para 16). This statement was not adequately explained away by the Third Appellant in his testimony in the court below, and in my opinion, there was no merit in his criticism regarding the accuracy in the recording of his statements. Accordingly, the appeals of the Second Appellant and the Third Appellant against their convictions for offences under s 97(1) of the Security Industry Act (in DAC 43705/2006 and DAC 43706/2006 respectively) are dismissed.

10 As for the First Appellant, the District Judge held that although she may have known all along that the discount would be payable, it was doubtful as to whether she had known beforehand about the manner in which that discount was to be given, and accordingly, she should not be held liable for the same offence as the Second Appellant and the Third Appellant (Judgment at [137]). The Prosecution submitted that the First Appellant could not have given the Third Appellant a private discount after the parties had executed the transaction at 4.5¢ a share without breaching s 97(1) of the Security Industry Act. This submission, however, did not address the issue of whether the First Appellant had the requisite *mens rea*, *viz*, the intention to create such false or misleading appearance. In this regard, it is pertinent that the evidence adduced revealed that there was at least one way in which a discounted price could have been given legitimately, namely, by a married trade. It was not as if there was no way a discounted price could have been given without there being the intention to create a false or misleading appearance. On the evidence, therefore, the District Judge was entitled to accept that there was a reasonable doubt that the First Appellant had the requisite *mens rea*. Furthermore, unlike the Second Appellant and the Third Appellant, the First Appellant had no direct financial motivation to ensure that the price of WizOffice shares remained at 4.5¢. The Prosecution's appeal against the First Appellant's acquittal for an offence under s 97(1) of the Security Industry Act (in DAC 43704/2006) is, therefore, dismissed.

11 Turning, next, to the offence of falsifying accounts, s 477A of the Penal Code states:

> Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully and with intent to defraud destroys, alters, conceals, mutilates or falsifies any book, electronic record, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully and with intent to defraud makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in any such book, electronic record, paper, writing, valuable security or account, shall be punished with imprisonment for a term which may extend to 10 years, or with fine, or with both.

The District Judge found that the First Appellant had known all along that the discount of $150,000 was payable to the buyer of the shares and rejected her evidence that she thought that the $150,000 was fees for the person who had found the buyer for the WizOffice shares in question. This was not an unreasonable finding of fact. The Second Appellant testified that he had told the First Appellant on 18 December 2001 that there was a buyer who was willing to buy the WizOffice shares at a discount of $150,000 (see NE pp 403 and 451) and that she subsequently expressed her agreement to the offer (NE at p 403). Furthermore, the evidence also suggested that the First Appellant was aware that WizOffice shares would, in all likelihood, be sold at a discount. In an email to the First Appellant dated 5 December 2001, the Second Appellant stated that an offer (whose identity is not revealed in the said email) had been made for the WizOffice shares but that would require a discount to be given. The First Appellant's story appears all the more unbelievable, as she admitted that she did not enquire why GNR had to pay $150,000 – one-third of the money received for the shares – in fees for the person who had found a buyer for the shares (see NE at pp 378–380). It follows that the First Appellant, by not reflecting that the $150,000 was a discount to SHPL in GNR's accounts, had falsified GNR's accounts wilfully and with intent to defraud. Her appeal against

her conviction for an offence under s 477A of the Penal Code (in DAC 15729/2006) is, accordingly, dismissed.

12 As for the Second Appellant's complicity in the First Appellant's falsification of GNR's accounts, the key issue was whether the Second Appellant's version of the events, namely, that it was the First Appellant who had created the Advisory Agreement, should be believed. The Second Appellant claimed that the Advisory Agreement was signed in March 2002 when the First Appellant said that she wanted some documentation on the payment to Yee (NE at p 418). The Advisory Agreement was subsequently signed and backdated to 10 December 2001. The First Appellant, in contrast, claimed that the Second Appellant told her to draft a contract for Yee's services sometime between 19 December 2001 and 21 December 2001 (NE at p 310). This was done, based on a template provided by the Second Appellant, and duly signed by Yee (NE at pp 310–311). The secretary who drafted the Advisory Agreement, one Cheng Poh Lim @ Wendy, who also signed the Advisory Agreement as a witness, testified that the Advisory Agreement had been drafted in 2001 and not 2002 (NE at p 394). Yee's testimony also supported the First Appellant's version of the events. She stated that sometime in late December, the Second Appellant had asked her to sign the Advisory Agreement (NE at p 47). Taking the evidence as a whole, the District Judge was entitled to accept the First Appellant's version of the events. The District Judge was of the view that Yee was an honest and credible witness based on her demeanour and her frankness and rejected the attempts to portray her as a woman intent on revenge (see Judgment at [118]), and there was no reason for me to doubt this observation. Having accepted that the Advisory Agreement had been drafted at the behest of the Second Appellant, the conclusion which follows would be that the Second Appellant had, aided and abetted the First Appellant in her falsification of GNR's accounts. There could have been no reason for the Second Appellant to have had the Advisory Agreement drafted and subsequently signed by Yee, an air stewardess at the material time, unless he wanted to disguise the $150,000 discount as a payment for advisory services. The fact that the term "acquisition fee" was used in GNR's books was immaterial, as, on the evidence, the basis for that entry was, according to the First Appellant, the Advisory Agreement (NE at p 22). The Second Appellant's appeal against his conviction for an offence under s 477A of the Penal Code (in DAC 43702/2006) is, therefore, dismissed.

13 The Prosecution's case was that the First Appellant and the Second Appellant had committed a further offence of falsifying the books of GNR, this occurring when the Advisory Agreement was subsequently cancelled, and the $150,000 payment recorded as a repayment of a loan owing to the Second Appellant by GNR. The District Judge's decision to acquit both the First Appellant and the Second Appellant of the further offence was based on the evidence of the GNR auditors who testified that it would not have been illegal to reclassify the payment for advisory services as a repayment of a loan had the necessary documentation been present. But since both the First Appellant and the Second Appellant had been complicit in falsifying GNR's accounts to state that the $150,000 discount was a payment for advisory services, the reclassification of the $150,000 as a repayment of a loan amounted to another instance of the deceit perpetrated, and, therefore, was another instance of a falsification of GNR's accounts. In this regard, the evidence of the auditors, who were not informed of the first false classification of the $150,000, in my view, merely showed that under normal circumstances, had the necessary documentation been executed, it would not have been illegal to reclassify the payment for advisory services as a repayment of a loan. But since the first classification had been a wilful false classification with the intention to defraud, it follows that the second classification, was likewise a wilful false classification with the intention to defraud. Accordingly, the appeals of the Prosecution against the acquittal of the First Appellant and the Second Appellant, in respect of the offences under s 477A of the Penal Code, in DAC 15730/2006 and DAC 43703/2006 respectively, are allowed.

14 Turning to the charge against the Third Appellant for an offence of abetment to falsify the books of SHPL (in DAC43701/2006), there was no reason for me to overturn the District Judge's findings of fact, and hence, his acquittal of the Third Appellant under the said charge is upheld.

15 Likewise, I find no reason to overturn any of the sentences imposed by the District Judge. In my view, the sentences were neither manifestly excessive nor manifestly inadequate.

16 For the above reasons, I dismiss all the appeals against conviction, save for the appeals by the Prosecution against the acquittal of the First Appellant and the Second Appellant under their respective second charges under s 477A of the Penal Code (in DAC 15730/2006 and DAC 43703/2006), and dismiss all the appeals against sentence. In regard to the convictions of the First Appellant and the Second Appellant under their respective second charges under s 477A of the Penal Code, I impose a fine of $10,000 for each of them, and in default, one month's imprisonment.

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