

Public Prosecutor v Ghazali bin Mohamad Rasul  
[2014] SGDC 59

**Case Number** : CEA-17 to 22-DSC-2013, Magistrate's Appeal No 321 of 2013

**Decision Date** : 17 February 2014

**Tribunal/Court** : District Court

**Coram** : Christopher Goh Eng Chiang

**Counsel Name(s)** : Mr Ong Yew Kwang, Legal Counsel, for the Council for Estate Agencies; Mr Derek Kang, Rodyk & Davidson LLP for the Accused

**Parties** : Public Prosecutor — Ghazali bin Mohamad Rasul

17 February 2014

**District Judge Goh Eng Chiang Christopher:**

1 This is an appeal against sentence by the accused and is an expansion of my oral grounds delivered on 11 December 2013.

2 The accused, Ghazali bin Mohamed Rasul pleaded guilty to:

(i) one (1) charge (*CEA-19-DSC-2013 ie. C3*) under reg. 6(1)(a) of the Estate Agency (Estate Agency Work) Regulations ("*the Regulations*") for introducing his client to a moneylender; and

(ii) one (1) charge (*CEA-20-DSC-2013ie. C5*), under reg. 6(1)(b) of the Regulations for receiving a sum of \$150.00 from the said moneylender.

3 Another 4 charges under reg. 6(1)(a) were taken into consideration for the purposes of sentencing.

4 He understood the nature and consequences of his plea. The sentence prescribed by law for the offences was also explained to the accused. He maintained his plea of guilty and admitted to the facts without qualification.

5 After careful consideration of the facts, the prosecution's submission on sentence and the plea in mitigation, I sentenced the accused

(i) *CEA-19-DSC-2013* : a fine of \$10,000 (in default 40 days' imprisonment) for the offence under reg. 6(1)(a); and

(ii) *CEA-21-DSC-2013* : a fine of \$8,000 (in default 32 days' imprisonment) for the offence under reg.6(1)(b)

**Summary of the Facts**

6 The accused was a registered estate agent with PropNex Realty Private Limited ("PropNex"). One Mohammad Redzuwan bin Ibrahim ("Redzuwan") was the accused person's client. Redzuwan had informed the accused that he was in serious financial difficulties and needed money to settle debts and finance his son's overseas university education. The accused offered his services to look for a cheaper HDB flat. Redzuwan was aware that, being in arrears of his present HDB loan, he would therefore not be able to get a loan for the replacement flat.

7 Thereafter, upon Redzuwan's request, the accused introduced him to a licensed moneylender. Redzuwan's attempt to borrow a sum of \$10,000 from the moneylender was turned down. Instead, he was offered a \$7,000 loan at 10% interest per month with an upfront fee of \$700.

8 Subsequently, Redzuwan encashed the \$7,000 cheque, gave the \$700 upfront fee to the accused who then gave it to the licensed moneylender. The accused then received \$150 from the moneylender as a referral fee. Redzuwan subsequently took up additional loans from the moneylender between Jul - Sep 2011 on his own accord.

9 Redzuwan then told the accused to market his property and agreed to pay the accused 2% commission. Redzuwan's flat was eventually sold for \$441,000. With the money, Redzuwan paid the accused \$9,437 for his services and repaid his loans to the moneylender, which amounted to about \$26,500, around which \$7,000 were in interest repayments.

10 Thereafter, the accused arranged for Redzuwan to rent his brother's flat but was evicted after 6 months as the accused person's brother required the flat. Redzuwan had then to rent a flat from the open market as he was unable to obtain a HDB loan and could thus not afford a replacement flat. Redzuwan has informed the Investigating Officer of the case that once his money is depleted, he would be homeless.

### **Punishment Prescribed by Law / Antecedents**

11 I am told that this is the first prosecution under this section. The punishment prescribed by law is a fine of up to \$25,000 and imprisonment of up to 12 months or to both. This is the same as that of an unregistered estate agent performing the work of an estate agent.

12 In 1997, the accused was convicted on two counts for CBT as a servant and was sentenced to a total of 30 month's imprisonment.

### **Plea in Mitigation**

7 Vide a written plea in mitigation, counsel for the accused urged the court to impose a fine only. Other than the usual mitigating factors, the main submissions were as follows:

(i) For the offence under reg.6(1)(b), the accused was charged under the least culpable limb of "introducing" his client to a moneylender;

(ii) For the offence under reg.6(1)(a), it was submitted that at its worst, this was akin to a corruption charge and it was highlighted that if the court drew an analogy to cases under the Prevention of Corruption Act, the sentence would be a "\$2,000 - \$3,000" fine.

### **Prosecution's Submissions on Sentence**

8 Prosecution submits that an appropriate deterrent sentence was a fine of \$15,000 and two week's imprisonment. Two submissions on sentence dated 11 September 2013 & 11 October 2013 ("1st submission" and "2nd submission", respectively) were tendered to support this. I will deal with the various points raised in these submissions.

### **Sentencing Considerations**

## **Intention of Parliament**

9 This seems to be a standard submission from prosecuting agencies. Whilst Hansards were tendered to court, it does not tell the court why a deterrent sentence is applicable on the facts in the instant case. Neither does it explain why the deterrent sentence should necessarily include a jail term and not, for example, a high fine.

10 However, having read the submission of CEA, I am not even sure whether the instant case was indeed of the type that caused Members of Parliament to raise their concern during the Bill's second reading in Parliament. In this respect, I refer to paragraphs 6, 7, 9 & 10 of CEA's 1st submission and paragraph 16 of CEA's 2nd submission.

11 From the Statement of Facts, it is clear that it was in fact Redzuwan who had requested that the accused introduce him to a moneylender and more than half the total amount borrowed by Redzuwan without any intervention from the Accused. The facts do not appear to show that Redzuwan had been "deceived" or had been "taken advantage of" (see paragraph 9, 1st submission). The Accused person's actions were clearly wrong but I am unable to characterize him as being a "rogue agent" (see paragraph 10, 1st submission) based on the facts before me.

## **Aggravating Factors**

12 CEA cites several aggravating factors (7) for the court's consideration in their 1st submission (see paragraphs 18-25) and further elaborated in their further submission. I find it difficult to comprehend why these factors have been classified as "aggravating".

(i) *Referring client to a moneylender that charges exorbitant interest rates.*

CEA submits that the accused led "Redzuwan down the path where it became necessary for him to sell his flat and repay his debts ....." suggests that Redzuwan's problems were caused solely or principally by the referral to a moneylender by the accused and the loans taken thereafter. Unless I have been reading a totally different Statement of Facts, I distinctly recalled that Redzuwan was already in serious financial difficulties (see paragraph 7, SOF) and his need to sell the flat was there even before he decided to take a loan from the moneylender. Further, additional loans were taken up by Redzuwan himself (see paragraph 19, SOF) and this amounted to more than 50% of the total loan amount. In addition, when queried, CEA's prosecutor conceded that the accused's action did not contribute significantly to the subsequent financial problems of Redzuwan.

(ii) *Profiting from the sale at the expense of his client / exploiting the professional relationship between a salesperson and his client / Underhand tactics causing disrepute to the industry*

CEA appears to submit that the accused, knowing that Redzuwan would not be able to obtain a new HDB loan, exploited this information, and somehow persuaded him to sell the flat anyway so that he could charge a high 2% commission and thus pocketed over \$9,000. However, I note that the SOF does not reveal any of this. All the SOF tells the court is that Redzuwan was in serious financial difficulties and wanted to sell his flat. Redzuwan knew that he may not be able to get a new HDB loan. Further, CEA subsequently conceded that the 2% commission was what the standard commission rate of PropNex and that large portion of the commission would be given to the company.

(iii) *Causing his client to incur a huge loss*

As I have already noted, it was Redzuwan who had requested the introduction and more than 50% of the total loan amount taken out by Redzuwan was taken out without any involvement of the accused. I am once again unsure if CEA and I were reading from the same SOF.

(iv) *Ignoring his client after completion / Actively participating in the moneylending transaction*

True. These two factors could be construed as aggravating factors. My view is, however, in the wider scheme of things, what weight I would place on this was not even enough to warrant a high fine, let alone a custodial term.

At this juncture, I will address the \$150 that the accused had received as a "referral fee". The defence had sought to convince the court that, at its worst, this was a corruption case. And as a corruption case, the courts would have imposed a fine of "\$2,000 - \$3,000" for a gratification of \$150. Cases were tendered to this effect.

Responding to this, CEA submitted that this was more serious than a case of corruption. I truly hesitate to enquire from CEA how they had arrived at this conclusion. Even the cases cited in CEA's further submission on sentence in response to this gives pause for thought. For example, in *PP v Tay Hai Choon (MA 273 of 2000)*, it is abundantly clear that the reason for the harsh penalty imposed was because the accused was a police officer (see paragraph 98 of the grounds of decision in *Tay Hai Choon*).

### (c) Comparison with other CEA cases

14 It was submitted that offences of referring a client to a moneylender was more serious than that under s.29(1)(a) EAA of unregistered salespersons performing the work of an estate agent as it may lead to the loss of homes. Two cases were cited by CEA to, I presume, show the sentences that the court has imposed for s.29(1)(a) offences. These were:

(i) *PP v Lailatul Asha Bte Hassim (CEA 23 of 2012)*, wherein the Accused was fined \$13,000 for conducting a viewing, negotiating and closing the rental of a room at \$2,100 per month; and

(ii) *PP v Yeu Han Chong Simon (CEA 10 of 2013)* wherein the Accused was fined \$15,000 for holding himself out as a salesperson from DWG to the landlord and tenant, conducting a viewing, arranged for the tenancy to be signed was closing the rental of the room at \$1,700 per month.

15 First of all, CEA's submission that referring a client to a moneylender was more serious than that under s.29(1)(a) EAA of unregistered salespersons performing the work of an estate agent as it may lead to the loss of homes is misconceived. Either act could lead to the loss of homes. Therefore, this submission is neither here nor there. There appears to be no other basis for arriving at this conclusion.

16 Secondly, the cases cited by CEA appear to be overly selective. A review of CEA's cases would reveal that the starting point for an unregistered salesperson renting out a room was a fine of about \$6,000 (see: *PP v Lim Kwang Beng (CEA 16-17 of 2012)*) and the selling of a property was a fine of about \$8,000 (see *PP v Tan Cher Peng [2012] SGDC 33*).

17 A perusal of the two cases cited by CEA at paragraph 14, above, would show that the higher sentences imposed by the trial judge were due to the aggravated facts in these cases. In *Lailatul*, the district judge in his oral grounds had explained why the case was more serious than in *Lim Beng Kwang* as well as *Tan Cher Peng* and *PP v Sim Soon Leong, Raymond (MA 127 of 2012)*, wherein the accused was fined \$10,000 per charge. It was not as straightforward as set out in CEA's 1st submission. Was the instant case more serious than these two cases? In my view they are not.

### Starting Point

18 As I have earlier noted, this is the first prosecution for this type of offence. The punishment prescribed by law for both these offences committed under the regulations is a fine of up to \$25,000 and imprisonment of up to 12 months or to both. This is the same as that of an unregistered estate agent performing the work of an estate agent. Having the opportunity to review the cases relating to unregistered agents performing the work of an estate agent and I am of the view that the starting point for an offence under reg.6(1)(a) or reg.6(1)(b) of the Estate Agency (Estate Agency Work) Regulations should be similar, namely a fine of between \$6,000 to \$8,000 where there are no aggravating factors.

### Sentence Imposed

19 In summary, the prosecution has submitted a sentence of \$15,000 and two week's imprisonment based on the supposed aggravated facts of the case whilst the defence submission is essentially for a low fine of "\$2,000 - \$3,000". I am, however, of the view that the starting point for such offences should be in the region of \$6,000-\$8,000 where there are no aggravating factors.

20 After reviewing the statement of facts and CEA's submissions (written and oral), I was of the view that these aggravated facts did not exist, if at all. Redzuwan was already in serious financial difficulties. That was why he approached the accused to sell his flat, despite knowing that he may be eligible for a HDB loan thereafter. It was Redzuwan himself who asked the accused to introduce him to a moneylender. And it was Redzuwan who proceeded to borrow more money than he should have despite the high interest rates charged. The person who was, therefore, mainly responsible for Redzuwan's present predicament, appeared to Redzuwan himself.

21 Accordingly, I was of the view that CEA's submission with regard to a deterrent sentence was clearly misconceived:

(i) On the facts of the case, a custodial term was not warranted. More so, since this was in effect, a regulatory offence and I would be slow to impose a custodial term unless the facts were really aggravated;

(ii) The fine that should be imposed should be one that is sufficient to deter would be offenders. However this did not necessarily mean that the fine should be \$15,000 (or a figure near that) which appears to be disproportionate to the benefit accrued, even if I took into account the public policy considerations;

22 Having carefully considered all the factors, I was of the view that the proper fine to be imposed in such a case was:

(i) CEA 19/2012 – for the breach of regulation 6(1)(a), a fine of \$10,000, in default 40 days; and

(ii) CEA 21/2012 – for a breach of regulation 6(1)(b), a fine of \$8,000, in default 32 days.

23 The total fine is therefore \$18,000, in default 72 days imprisonment. The higher fine imposed for the reg.6(1)(a) offence reflects the fact that there are 4 other similar charges that have been taken into consideration for the purpose of sentencing.

24 The accused, being dissatisfied with the sentence I have imposed, has now appealed against it. The accused has paid \$9,000 on 11 December 2013 and was to have paid the remaining \$9,000 fine in 3 equal instalments on or before 11 January 2014, 11 February 2014 and 11 March 2014.

## **Concluding Thoughts**

25 I end with some concluding thoughts on this matter, in particular the submission of a deterrent sentence(s). In many cases prosecuted before this court by CEA, in particular where the offence is being prosecuted for the first time, CEA has submitted for deterrent sentences to be imposed. Very often, this would include the submission for a short custodial term to be imposed. When questioned further, the decision to submit for a deterrent sentence to be imposed is usually attributed to "senior management", to which I would presume refers to the senior management of CEA. There are, of course, certain cases in which the aggravated facts of that case would warrant such a submission and the onus would be on CEA to make such a submission to the court if it were warranted. But it appears that no such thought has been put into this.

26 For example, in the instant case, CEA's submission was for a \$15,000 fine and two weeks' imprisonment for the charges under reg.6(1)(a) and 6(1)(b) charge. In *PP v Mustafa Kamal Bin Seri*, the accused in that case, in addition to charges under s.409 and s.420 of the Penal Code, also faced one charge under reg.6(1)(a) and reg.7(1)(a) of the Estate Agency (Estate Agency Work) Regulations. Another charge under reg.6(1)(b) was taken into consideration for the purposes of sentencing. The facts relating to the offences under the Estate Agency (Estate Agency Work) Regulations in *Mustafa Kamal* looked clearly more aggravated than the instant case in, but CEA's submission for a deterrent sentence there was exactly the same as in this case, namely \$15,000 fine and two weeks imprisonment. I am disturbed by this.

27 I would suggest that CEA carefully considers when a case would warrant a submission of a deterrent sentence (whether or not such a sentence would include a custodial term) and consider their submission(s) carefully before making them in court.

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