

Public Prosecutor v Lim Siew Har
[2018] SGDC 39

Case Number : DAC No. 920762-2015 & Ors (11), Magistrate's Appeal No. 9314-2017-01

Decision Date : 21 February 2018

Tribunal/Court : District Court

Coram : Lorraine Ho

Counsel Name(s) : DPP Stacey Fernandez (Attorney-General's Chambers) for the Public Prosecutor; Derek Kang and Lulla Ammar Khan (M/s Ho & Wee LLP) for the Accused

Parties : Public Prosecutor — Lim Siew Har

Criminal Law - Penal Code Offences - Cheating

[LawNet Editorial Note: Leave to withdraw the appeal in MA 9314/2017/01 was granted by the High Court on 5 November 2018.]

21 February 2018

District Judge Lorraine Ho:

INTRODUCTION

1 It is perhaps not uncommon that relationships between friends and contemporaries become strained as a result of money issues. It is also not uncommon for lines to become blurred in money disputes between them. Was it a straightforward loan from one party to another? Or was it intended to be money entrusted by one party to another for or with the belief that it was for the purpose of a business venture? Did one party forego his or her money on a false representation made by the other or was it really a personal loan?

2 Unfortunately, this was such a situation in the present matter before me. In this case, it involved 2 elderly ladies who were originally friends. In fact the accused was an old friend of the victim's brother, whom the accused was very close to for many years. Both the accused and victims are in their 70s.

BACKGROUND FACTS

The Charges

3 The accused, Lim Siew Har, is a 76-year-old Singaporean female retiree and an undischarged bankrupt. She faced 11 charges for cheating housewife Leow Boon Tee ("Leow") of a sum of \$646,900.00 between January 2011 and October 2011 by deceiving Leow into believing that she needed to pay the accused various amounts of money in order to operate six 4D outlets with Singapore Pools. She faced a 12th charge for abetting by intentionally aiding one Lian Sing Huang ("Lian") in deceiving Leow into believing that Lian was a senior employee at Singapore Pools and Leow needed to pay \$63,300 to renovate a Singapore Pools outlet at Marina Bay Sands ("MBS").

4 The accused was said to have received the monies through various cheques as well as cash handed over to her by Leow. The monies were supposed to have been used for deposits, legal fees, stationery costs, licence transfer fees, security bonds, administrative fees, renovation costs and machine costs for operating the six Singapore Pools outlets. She was 70 years old at the time of the offences.

5 The first charge read as follows:

You, LIM SIEW HAR, are charged that you, sometime in January 2011 in Singapore, did cheat one Leow Boon Tee, to wit, by deceiving her into believing that she needed to pay S\$65,300 in order to operate a Singapore Pools (Private) Limited outlet located at Marina Bay Sands, a fact you knew to be false, and by such manner of deception, you dishonestly induced the said Leow Boon Tee to deliver to you

- a. An Oversea-Chinese Banking Corporation Private Limited cheque numbered 113097 for S\$3,500; and
- b. An Oversea-Chinese Banking Corporation Private Limited cheque numbered 113096 for S\$61,800

and you have thereby committed an offence punishable under Section 420 of the Penal Code (Cap 224).

6 A summary of the details in respect of the 12 charges was as follows:

Charge No./ DAC No.	Brief Description	Offence
1st Charge DAC-920762-2015	In January 2011, the accused deceived Leow into believing she needed to pay \$65,300 in order to operate a Singapore Pools outlet at Marine Bay Sands. Leow paid these moneys by cheques.	s 420, Cap 224
2 nd Charge DAC-920763-2015	Between February 2011 and March 2011, the accused abetted by intentional aiding Lian Sing Huang in deceiving Leow into believing that Lian was a senior employee at Singapore Pools, and Leow needed to pay \$63,300 to renovate a Singapore Pools outlet at Marina Bay Sands. Leow paid \$30,000 by cheque and \$33,300 in cash.	s 420 r/w s109, Cap 224
3 rd Charge DAC-920764-2015	In January 2011, the accused deceived Leow into believing that she needed to pay \$65,300 to operate a Singapore Pools at Bedok. Leow paid moneys to the accused by cheque.	s 420, Cap 224
4 th Charge DAC- 920765-2015	Between January 2011 and February 2011, the accused deceived Leow into believing that she needed to pay \$65,300 to operate a Singapore Pools at Clementi. Leow paid moneys to the accused by cheque.	s 420, Cap 224
5 th Charge DAC- 920766-2015	Between January and September 2011, the accused deceived Leow into believing that she needed to pay \$120,000 for security bonds to operate Singapore Pools outlets at Bedok and Clementi. Leow paid the accused \$60,000 by cheques and \$60,000 in cash.	s 420, Cap 224

6 th Charge DAC- 920767-2015	Between March and July 2011, the accused deceived Leow into believing that she needed to pay \$65,300 to operate a Singapore Pools outlet at Chai Chee. Leow paid the accused moneys in cash.	s 420, Cap 224
7 th Charge DAC- 920768-2015	Between March and July 2011, the accused deceived Leow into believing that she needed to pay \$65,300 to operate a Singapore Pools outlet at Orchard. Leow paid the accused \$10,000 by cheque and \$55,300 in cash.	s 420, Cap 224
8 th Charge DAC- 920769-2015	Between March and October 2011, the accused deceived Leow into believing that she needed to pay \$4,000 as an administrative fee to operate a Singapore Pools outlets at Chai Chee and Orchard. Leow paid the moneys to the accused in cash.	s 420, Cap 224
9 th Charge DAC- 920770-2015	Between March and May 2011, the accused deceived Leow into believing that she needed to pay \$65,300 to operate a Singapore Pools outlet at Toa Payoh. Leow paid the moneys to the accused in cash.	s 420, Cap 224
10 th Charge DAC- 920771-2015	Between March and June 2011, the accused deceived Leow into believing that she needed to pay \$50,000 as a security bond to operate a Singapore Pools outlet at Toa Payoh. Leow paid \$10,000 to the accused by cheque, and \$40,000 in cash.	s 420, Cap 224
11 th Charge DAC- 920772-2015	Between March and July 2011, the accused deceived Leow into believing that she needed to pay \$5,800 for renovation works to operate a Singapore Pools outlet at Toa Payoh. Leow paid the accused the moneys in cash.	s 420, Cap 224
12 th Charge DAC- 920773-2015	In August 2011, the accused deceived Leow into believing that she needed to pay \$12,000 in order to purchase betting machines to operate six Singapore Pools outlets. Leow paid the accused the moneys in cash.	s 420, Cap 224

7 The accused claimed trial to all 12 charges. After a 14-day trial, I convicted the accused of all 12 charges on 4 July 2017. The matter was adjourned to 11 October 2017 for mitigation and sentencing.

8 Being dissatisfied, the accused has appealed against both her conviction and sentence. She is presently on bail pending appeal.

The Accused's Defence

9 The accused did not deny she had received a sum of \$305,900 by way of various cheques issued by Leow and Leow's son. She also did not deny she had received some cash from Leow but averred that the amount received was less than the sum of \$341,000 alleged by Leow. She was however prepared to admit to receiving a lower sum of \$187,000 from Leow in the form of cash.

10 The accused's defence was that she had received the cheques and cash from Leow as personal loans to pay off her debts, medical bills and gambling habits. Hence, whilst she readily admitted to the debt, she denied having cheated her by fabricating a story of helping her set up six 4D outlets with the Singapore Pools for operation.

11 At the trial, the accused did not challenge the voluntariness of her statements. In her conditioned statement given on 13 February 2015 (P34), the accused did not deny that she had recommended shop units to Leow as Ah Tan's recommendation so that she could get a loan from Leow. By recommending shop units to Leow, she was doing Leow a favour in the hope that Leow would extend her a loan in return. The accused admitted she had borrowed slightly more than \$400,000 from Leow by lying to Leow that she needed the money for her house, to pay her friends and her mother's medical bills. In actual fact, she spent the money on gambling.

12 In her cautioned statements (P42 to P53) signed for all the charges, the accused said the amount which she had taken was not as much as per what had been stated in the charges. She also pleaded for leniency due to her age.

13 On this point, I noted that most of the sums stated in the charges are not round but odd numbers. This perhaps suggested that there was or were particular reasons intended for the amounts given to the accused.

THE PROSECUTION'S CASE

14 At the trial, the Prosecution called upon seven witnesses to testify. They were:

- (i) PW1 – Mr Ng Aik Pin (Complainant and victim's son – "Ng");
- (ii) PW2 – Mr Kevin Khoo Kah Chuan (Manager in retail network planning for Singapore Pools);
- (iii) PW3 – Station Inspector Manoj Kalwani (Investigation Officer ["IO"]);
- (iv) PW4 – Mr Ngo Hea Kin (AI Jewellery representative);
- (v) PW5 – Mdm Leow Boon Tee (Victim – "Leow");
- (vi) PW6 – Ms Peng Wan Joo (Freelance copywriter and translator); and
- (vii) PW7 – Cheng Chew Shiau (AI Jewellery representative).

15 Lian, whom the accused was charged under the 2nd Charge to have abetted by intentional aiding him in deceiving Leow into believing that Lian was a senior employee at Singapore Pools, was certified by Dr Chiam Peak Chiang, a visiting consultant at Apex Harmony Lodge, to be suffering from moderately severe dementia (P37). This confirmed an earlier report from Changi General Hospital dated 13 August 2015 (P36), which diagnosed Lian with dementia and depression and hence unable to undergo court proceedings. As such, Lian was not charged and did not testify at the trial. Lian was also known as "Ah Tan" to Leow and the accused.

16 I shall examine the evidence of the relevant witnesses below according to the various charges. Essentially, Leow and Ng were the two material witnesses who testified as the prosecution witnesses.

Background facts surrounding the charges

17 Leow testified in court that she first became acquainted with the accused sometime in 2008 when she met her at Singapore General Hospital where her younger brother, Leow Eng Guan ("Ah Guan"), was warded. The accused was known to Leow as Joyce and the accused would call Leow "San Jie" or "Third Sister". At that time, Leow was not personally acquainted with the accused. She only knew that the accused had been living with Ah Guan for about three to four decades.

18 Sometime in 2010, Leow found out that the accused could cook Nyonya dishes. She informed the accused that she enjoyed cooking too. The accused then told Leow she would teach Leow how to cook Nyonya dishes. When the accused and Leow were cooking, Leow observed that the accused kept receiving calls. On one occasion, the accused told Leow that her male

cousin, "Ah Tan" (whom Leow discovered later as Lian), was the third highest ranking personnel in Singapore Pools who specialised in looking for Singapore Pools outlets around Singapore. He apparently asked the accused to find persons who might be interested in operating an outlet which would be taken back by Singapore Pools. When the accused offered Leow this opportunity, Leow initially rejected it as she was not familiar with betting related matters.

19 Nevertheless, the accused kept persuading Leow to take up the offer. The accused informed Leow that she herself had operated Singapore Pools outlets previously and it was very easy to do so. The accused further volunteered to help Leow if she were to take up the offer. Leow said became convinced by the accused's proposal.

Charges with payments made using cheques only

20 I shall now deal with the first, third and fourth charges collectively as the evidence in respect of these charges forms largely the backbone of the entire case.

21 Since the accused did not deny receiving the cheques, the issue for these charges where the mode of handing over the payment involved only cheques was: whether Leow had delivered the cheques to the accused as a result of a dishonest or fraudulent inducement by the accused based on a false representation which the accused knew was not true.

Facts pertaining to the First, Third and Fourth Charges – Marina Bay Sands, Bedok and Clementi Outlets

22 The First Information Report ("FIR") lodged by Ng dated 15 November 2012 (P31) was adduced by the Prosecution as part of Ng's evidence before the court. In the said FIR, Ng stated the chain of events commenced on 9 January 2011, when the accused went to Leow's house and informed her that she had a cousin called Ah Tan working at the Singapore Pools. The accused represented to Leow that Ah Tan knew someone operating a Singapore Pool outlet in Clementi who was giving up the business. The accused asked Leow if she was interested to take over the business. As the accused was a very old friend of Ah Guan, upon the accused's persuasion, Leow trusted her and agreed to take over the business. This representation by the accused was confirmed by Leow in court.

23 Ng stated that the accused made the same representation to Leow for the other two outlets in Bedok and MBS. Leow gave evidence that she believed the accused's representations because she did not think that the accused would cheat her and her son given the long relationship between the accused and Leow's younger brother.

24 Following from there, the accused represented to Leow to make the following payments to set up the MBS Outlet for 4D operations:

(i)	Deposit	- \$60,000
(ii)	Legal fees	- \$3,500
(iii)	Stationery fees	- \$1,800
	Total	<u>\$63,300</u>

25 As a result of the accused's representation, Ng issued OCBC Cheque no. 113097 dated 11 January 2011 (P2) for \$3,500 and OCBC Cheque no. 113096 also dated 11 January 2011 (P3) for \$61,800 to the accused for the MBS outlet. Both cash cheques issued totalled \$65,300 and were linked to an OCBC account in the joint names of Leow and Ng. As the accused had instructed for the payee on both cheques to be left bank on the representation that the application had to go through Ah Tan, cash cheques were issued. Leow handed them over to the accused who in turn said she would hand these cheques to Ah Tan.

26 Based on the bank records [(P2), (P3) and (P17)], it was undisputed that the 2 cash cheques were encashed by the accused.

27 Next, the accused represented to Leow to make the following payments to set up the Bedok Outlet for 4D operations:

(i)	Deposit	- \$60,000
(ii)	Legal fees	- \$3,500
(iii)	Stationery fees	- \$1,800
	Total	<u>\$65,300</u>

28 As such, Leow said she prepared two cheques for the accused. Ng issued OCBC Cheque no. 113100 dated 14 January 2011 for \$60,000 (P4). He issued OCBC Cheque no. 113153 dated 26 January 2011 for \$5,300 (P5) for the Bedok Outlet. Both cash cheques with the name of payee left blank and totalled \$65,300. Once again, Leow handed them over to the accused who said she would hand them over to Ah Tan for processing. The cheques issued were linked to an OCBC account in the joint names of Leow and Ng.

29 The cash cheque dated 14 January 2011 was encashed by the accused based on the bank records [(P4) and (P17)].

30 As for the cash cheque dated 26 January 2011, the accused bought a bangle for \$5,600 and traded in another item at AI Jewellery. She paid for her purchase with the cheque and the cheque was encashed by an employee of AI Jewellery, Cheng Chew Shiau (PW7), as confirmed by the bank records [(P5) and (P17)]. The accused received a refund for the balance \$3,100 in cash.

31 Mr Ngo Hea Kin ("Mr Ngo"), gave evidence as the sole proprietor of AI Jewellery. He issued an invoice (P38) dated 26 January 2011 to the accused and the signature on the invoice was his. He recalled attending to the accused who was at his shop that day. The accused purchased a jade bangle for \$5,600. She traded-in another bangle for \$3,400. Therefore, the net sum payable by the accused for purchasing the first bangle was \$2,200. To pay for her purchase of \$2,200, the accused gave Mr Ngo the OCBC cash cheque P5. However, as he was working alone in the shop that day, he was unable to encash the cheque.

32 Ms Cheng Chew Shiau ("Ms Cheng"), who has been working as a sales manager of AI Jewellery for about 7 years, confirmed in evidence that she was given the OCBC cheque P5 as stated in the invoice by her boss, Mr Ngo, when she returned to work on 28 January 2011. He passed her the cheque to encash it at the bank before she passed the cash of \$5,300 back to him.

33 Mr Ngo added that when he received the cash of \$5,300 from Ms Cheng on the same day, he refunded the cash of \$3,100 to the accused together with the first bangle which the accused had bought 2 days earlier. In exchange, he took the second bangle which the accused had traded-in. Mr Ngo said he was certain that he did not give the cash of \$3,100 and the first bangle to the accused on 26 January 2011 without waiting for the cash cheque to clear because the accused was not a regular customer.

34 Moving on, the accused represented to Leow to make the following payments to set up the Clementi Outlet for 4D operations:

(i)	Deposit	-\$60,000
(ii)	Legal Fees	-\$3,500
(iii)	Stationery Fees	-\$1,800
	Total	<u>\$65,300</u>

35 Ng issued OCBC Cheque No. 113156 for \$65,300 (P6) dated 14 February 2011 for Leow. Leow then handed the cheque over to the accused with the payee left blank as per the accused's instructions so that it could be handed over to Ah Tan for processing the application.

36 The accused testified that P6 was not a cash cheque but the name "Lim Siew Har" was written on the cheque by Ng when she collected it from Leow. Defence further sought to argue that even Ng was unsure if he had written the accused's name on the cheque himself when asked at the trial. Leow testified that this was not written by Ng but inserted by the accused herself.

37 The accused's assertion could not be true based on the bank records of P17 which clearly indicated "CASH CHQ WDL", i.e. P6 was a cash cheque. As such, this confirmed Leow's testimony that the payee's name must have been left blank when Leow gave the accused the cheque and the accused wrote her own name to encash the cheque. Further, as per the bank records and practices, the bank had obtained a copy of the accused's identity card and wrote her particulars at the back of the cheque before processing the cheque payment.

Charges with payments made using both cheques and cash

38 For these charges, the accused again did not deny receiving the cheques for herself but only disputed the amount of cash handed over to her.

Facts pertaining to the Second Charge – Renovation Cost for MBS Outlet

39 Since February 2011, the accused brought Leow and Ng to visit several Singapore Pools outlets on several occasions. On 17 February 2011, the Accused brought them to the Bedok, Clementi and MBS outlets to take a look. Ng took photos video recordings of the site visit to these outlets (P40) where he went together with Leow and the accused.

40 On this occasion, the accused further brought Ah Tan down to MBS to survey the unit. The accused introduced Ah Tan as a senior employee of Singapore Pools. The accused got Ah Tan to represent to Leow as follows:

- (i) His role in Singapore Pools was to look for suitable locations to open Singapore Pools outlets in Singapore;
- (ii) He needed to confirm Leow's particulars before submitting the applications to Singapore Pools; and
- (iii) Upon the submission of their applications, Singapore Pools would process each application and upon the current operator returning the licence to Singapore Pools they would be able to take over the outlet. This process would take about 6 months.

41 Ng confirmed in evidence before the court that Ah Tan informed him and Leow that he was indeed working for Singapore pools and his role as a very senior employee was to go around Singapore looking for suitable locations to open up Singapore Pools outlets. Ng added that Ah Tan represented to them that he would process their applications for them.

42 In fact, Leow recalled the accused later even arranged for Leow and Ng to meet up with Ah Tan at the coffee shop outside the Singapore Pools office at POMO Centre located at Selegie Road to confirm Ah Tan's role in Singapore Pools sometime in end February 2011. Before meeting Ah Tan, the accused explained to Leow over the phone that in addition to what she had paid earlier, they had to renovate the MBS outlet. As such, they had to pay a 50% deposit of the renovation cost of \$126,600 (i.e. \$63,300) and this would be refunded back to them after renovations. Ah Tan asked Ng to pass the cheque to the accused where the accused said she would, as per the usual, hand the cheque over to Ah Tan.

43 Based on Ah Tan's representation, Ng issued an OCBC Cheque no. 113160 for \$30,000 (P10) dated 28 February 2011 from the same joint account of Ng and Leow. As per the accused's instructions, Leow gave the said cash cheque to the accused with the payee's name left blank for Ah Tan to do the needful.

44 Based on the bank records [(P10) and (P17)], it was undisputed that the cheque was encashed by the accused.

45 As for the remaining amount of \$33,300, Ng withdrew cash of \$30,000 from Ng's and Leow's HSBC Premier bank account on 22 March 2011 and Leow handed the cash over to the accused. The withdrawal transaction was reflected in the bank statement (P11).

Facts pertaining to the Seventh Charge – Orchard Outlet

46 In the later part of March 2011, Ng testified the accused came to Leow's house again and informed her that the accused herself owned two Singapore Pools outlets in Chai Chee and Orchard. The accused claimed she had wanted to give up the business and asked if Leow and her son would like to take over her business as well. Leow agreed.

47 Further as stated in the FIR, as Leow owned a shophouse at Toa Payoh, the accused said she could help Leow apply for another Singapore Pools outlet licence for her shophouse too. The accused added that each person can apply and register for the licence of up to three outlets. She therefore recommended Leow to apply the first 3 units, namely MBS, Bedok and Clementi, under Ng's name and the next three outlets, namely Toa Payoh, Orchard and Chai Chee, under Leow's name.

48 Following from there, the accused represented to Leow that payment for the following was required for the Orchard outlet:

(i)	Deposit	-\$60,000
(ii)	Legal Fees	-\$3,500
(iii)	Stationery Fees	-\$1,800
	Total	<u>\$65,300</u>

49 As a result of the accused's representation, Leow gave the accused a HSBC Cheque no. 538002 dated 30 March 2011 for \$10,000 (P13). Once again, the cash cheque with the payee's name left blank was encashed by the accused [See bank records (P13), (P11) and (P33)].

50 As for the balance sum of \$55,3000, Leow said she made cash payment to the accused on a separate day together with payments for the Chai Chee outlet (6th Charge) and renovation works for the Toa Payoh outlet (11th Charge). Both Leow and Ng confirmed that there was no record for this particular cash withdrawal.

Facts pertaining to the Fifth and Tenth Charges – Security Bonds for Bedok, Clementi and Toa Payoh Outlets

51 Subsequently, the accused represented to Leow and Ng that security bonds were required to be paid for the Bedok, Clementi and Toa Payoh outlets. The security bonds for the Bedok and Clementi outlets were \$60,000 each per contract period whilst the security bond for the Toa Payoh outlet was \$50,000 as it was under the old scheme.

52 In respect of the security deposits for both the Bedok and Clementi outlets totalling \$120,000, Leow testified that she paid the accused as follows:

- (i) Citibank Cheque no. 000037 for \$43,000 dated 11 April 2011 (P14);
- (ii) Citibank Cheque no. 000038 for \$17,000 dated 25 April 2011 (P15); and
- (iii) Cash of \$60,000 taken from UOB Bank account with the sale of 1kg of gold worth \$70,636 worth \$70,636 on 1 September 2011(P16).

53 For the Citibank cash cheque amounting to \$43,000, the cheque was prepared by Ng for Leow to pass to the accused with the name of payee left blank. The bank records revealed that the cheque [(P14) and (32)] was encashed by the accused.

54 For the Citibank cash cheque amounting to \$17,000, similarly, the cheque was prepared by Ng for Leow to pass to the accused with the name of payee left blank. The bank records revealed that the cheque [(P15) and (32)] was encashed by the accused.

55 As for the cash, it was handed over to the accused on a separate day by Leow. Leow said she had received the cash of \$60,000 from Ng who had sold some gold from his UOB Bank account (P16). The cash was given by Leow to the accused.

56 In respect of the security bond for the Toa Payoh charge, Leow said she paid the accused \$10,000 by way of a cheque and \$40,000 in cash. The HSBC Cheque no. 538006 for \$10,000 (P18) dated 24 June 2011 was issued by Ng and given to the accused by Leow with the payee's name left blank. The bank records confirmed the accused had encashed the cash cheque [(P18), (P11) and (P33)].

57 As for the \$40,000 cash, Leow gave evidence that there was no record of the cash withdrawal for this sum, as she had given the cash which she kept at home in her safe to the accused separately. The accused informed her that she would give the money to Ah Tan.

Charges with payments made in cash only

58 Generally, the accused disputed the amount of cash received from Leow and the reasons for receiving the cash from the latter.

Facts pertaining to the Sixth and Ninth Charges – Chai Chee and Toa Payoh Outlets

59 As per the earlier outlets, the accused represented to Leow that the following payments were required to be made to operate each of the Singapore Pool outlet at Chai Chee and Toa Payoh:

(i)	Deposit	-\$60,000
(ii)	Legal Fees	-\$3,500
(iii)	Stationery Fees	-\$1,800
	Total	<u>\$65,300</u>

60 For the Chai Chee outlet, Leow said the accused requested for the payment to be made in cash with \$10,000 to be paid upfront first. As such, Leow got Ng to withdraw a sum of \$16,142.40 from their joint UOB Silver Bank account by selling off their silver on 11 March 2011 (P12). Leow then handed the cash of \$10,000 to the accused.

61 The remaining sum of \$55,300 was paid in cash by Leow separately. This was handed over to the accused together with other payments for the Orchard outlet and for the Toa Payoh renovation cost. Leow did not keep any record of the cash withdrawal.

62 For the Toa Payoh outlet, Leow said she paid the entire sum via two cash payments to the accused on the same day. The first was a sum of \$19,000 withdrawn from her HSBC joint account with Ng on 11 May 2011. The remaining sum of \$36,300 came from the cash which Leow had kept at home.

Facts pertaining to the Eighth Charge – Admin Fees for Chai Chee and Orchard Outlets

63 Sometime in October 2011, the accused represented to Leow that as the Chai Chee and Orchard outlets belonged to the accused, Leow would need to pay \$2,000 as admin fee to transfer the name of each outlet from the accused to Leow in order for Leow to take over their operations. The total amount of admin fee payable was therefore \$4,000.

64 As such, Leow got Ng to make a few withdrawals on 14 October 2011 from their joint HSBC account and handed the cash totalling \$4,000 to the accused. Based on the bank records (P11), Ng had made a total of three withdrawals of \$798.85 each and one withdrawal of \$718.96 that day, making a total of \$3,115.51.

65 The Accused did not dispute receiving the cash that day. However, she claimed that Leow gave the money to her to buy health and food supplements for Leow and Leow's family.

Facts pertaining to the Eleventh Charge – Renovation Cost for Toa Payoh Outlet

66 Sometime between June and July 2011, the accused informed Leow and Ng that a sum of \$5,800 was required to be paid for the renovation in order to convert the unit into a Singapore Pools outlet. Leow's evidence was that the accused told her that out of the entire renovation costs, \$5,800 was for the conversion into a betting outlet, \$800 for clearing rubbish and \$5,000 for other renovation works to the unit generally. Additionally, the accused told them that Singapore Pools would ask their contractors to come down to renovate the unit pending the approval of the licence.

67 The accused further arranged for Ah Tan to go down to the unit to do a survey and advised the contractors how to lay the wires, partition and furniture so as to conform to the standards as required by Singapore Pools. At the same time, At Tan asked Leow and Ng to submit to HDB an application for a change of trade in order to operate the Toa Payoh shop as a Singapore Pools outlet. This was done on 21 June 2011. During this time pending the application, the accused told Leow that Singapore Pools would pay for the rental and utility bill of the unit.

68 Leow said in evidence that there was no withdrawal record for the said sum of \$5,800. All she could recall was that it was on or around 14 July 2011 that she handed the cash over to the accused. When the accused engaged the contractors to carry out the renovation works, the accused represented to Leow that they were Singapore Pools' regular contractors.

69 In evidence before the court, the accused did not deny that she did receive the said monies from Leow. However, she said that they were all handed over to the accused by Leow to pay for the renovation works of the Toa Payoh unit generally. The sums for renovation works were also written on a handwritten note (P20 - side B) dated 10 April 2012 (but year wrongly dated as 2010) and signed by her. As such, the accused claimed that she had received the cash from Leow as a reimbursement to pay the renovation contractors in advance for the renovation works as instructed by Leow to do so.

70 Leow said she had paid the accused more than \$5,800 for the renovation works done to the Toa Payoh unit. The \$5,800 reflected the amount which the accused had represented to Leow was necessary for the unit to be converted to a Singapore Pools outlet.

Facts pertaining to the Twelfth Charge – Betting Machines for 6 Outlets

71 The accused represented to Leow and Ng that they needed to acquire four betting machines for each of the six outlets to print betting slips. Each machine would cost \$500. Hence, the total cost required for the 24 machines was \$12,000. The accused also arranged for Ah Tan to meet Leow and Ng for him to reinforce the reason to make payment in order to procure the betting machines.

72 Pursuant to the representation of both the accused and Ah Tan, Leow gave to the accused the \$12,000 in cash at the Toa Payoh foodcourt with Ng also present at that time. The cash was withdrawn from the joint HSBC account of Leow and Ng on 19 August 2011 as confirmed by the bank records (P11).

Facts subsequent to the payment of the \$646,900

73 All in all, a total sum of \$646,900 was paid out by Leow to the accused to operate the six Singapore Pools outlets. A summary table for the breakdown of how the \$646,900 was used in respect of all the Singapore Pools outlet (P1) was prepared by Ng and handed over to IO Manoj Kalwani ("IO Manoj") sometime towards the end of 2013 as requested by the latter. IO Manoj is a senior investigation officer of the Commercial Crime Squad at Tanglin Police Division and was the IO in charge of the present case.

74 Soon, matters got delayed and nothing was forthcoming. Ng and Leow said they had questioned the accused numerous times about the delay. The accused gave many reasons for the delay including the current operators refusing to move out of the outlets and Singapore Pools messing up the paperwork. The matter dragged on for several months.

75 When Ng and Leow threatened to file a police report, the accused then informed them that she knew the person in Singapore Pools who was in charge of licencing and she could fix a meeting for them to see him. However, on the day of the appointment, the accused received an apparent telephone call from the personal assistant of that person saying that he has gone out of town due to some urgent work matters. Once again, the matter dragged on for several months.

Handwritten Note (P7) and Statutory Declaration (P21)

76 In January 2012, when the accused went to Leow's house, Leow informed the accused she and Ng wanted to go to Singapore Pools to enquire about the delay. The accused nonetheless represented to Leow and Ng that Singapore Pools was prepared not only to refund the money back to them but compensate them for the delay, as an application usually would not drag beyond six months. The accused added that Singapore Pools was in any event agreeable to grant them the licences as per their applications.

77 Ng got the accused to sign on a handwritten note together with a copy of the her IC (P7) confirming that she had received a total of \$180,000 as cash deposit for three 4D outlets from Leow and this would be returned to Leow upon termination of the contract. The accused did not deny signing this document.

78 On 26 January 2012, Ng followed up by requesting the accused to execute a statutory declaration (P21), which stated that besides owing Ng \$1million, the accused assured Ng that the 3 business outlets would belong to Ng in time to come to commence business on a scheduled date. The accused also agreed to repay Ng within six weeks' from the date of execution. According to Leow and Ng, the 3 outlets were MBS, Clementi and Bedok.

Letters between Leow and Singapore Pools (P19 and P22)

79 At the same time, the accused encouraged them to write to Singapore Pools to apply for a Singapore Pools licence to operate the Toa Payoh outlet as the renovations had been completed. Leow therefore wrote to Singapore Pools on 31 January 2012 (P19) as the said outlet was registered under her name.

80 On 8 February 2012, Leow received a letter from Singapore Pools informing her that Singapore Pools had no plans at the present moment to invite applications from the public to become an authorised dealer (P22).

81 Mr Kevin Khoo Kah Chuan ("Mr Khoo"), who is a manager in Retail Network Planning in Singapore Pools, explained to the court that there are only three types of Singapore Pool outlets run in Singapore presently and in 2011.

82 The first type is completely owned and run by Singapore Pools and its employees. Such outlets include outlets or branches located at Clementi Central, Bedok Town Centre and Chai Chee Central. The Singapore Pools signage displayed at its own branches are more prominent as confirmed by Mr Khoo at photo D1.

83 The second type is run by their agents who are retailers. The retailers own the units of these outlets and they hire their own employees to run the outlets and pay for all related expenses for running them. This would include rental and renovation cost. Only the machines, the betting slips and tickets as well as the relevant training are provided by Singapore Pools. The

retailers are also required to provide a bankers' guarantee. The signage for such branches are less prominent but do indicate that the retailers are authorised to sell the Singapore Pools betting services, as confirmed by Mr Khoo at photo D2. Another example is the various branches located at the Orchard area.

84 However, Singapore Pools has not invited any public retailers to operate such outlets either by way of public ballot or otherwise for the last 20 to 30 years. The current retailers have therefore been running these outlets on their own for a very long time. Mr Khoo explained this right or licence given to them to do so is non-transferrable even if the retail owner were to give up the licence or sell away the unit. In essence, Singapore Pools made a decision not to issue new licences to the public. The only exception would be the death of a retailer and the next-of-kin could then apply to continue with the licence as a continuation of the family's business at the same property. Another exception would be a particular existing licenced retailer being given the right to operate an additional outlet. Mr Khoo cited the branch at Rivervale Plaza as an example (photo in D2). In any case, there would not be any new public licensee.

85 Another type of retailers are specific chain store retailers like NTUC, Cheers, Cold Storage, Giant and 7-Eleven. Such retailers are sourced directly by Singapore Pools. There are no application processes as such for anyone to openly apply for a licence to operate a Singapore Pools outlet.

86 The third type is the live betting outlets and they are located at the two integrated resorts including the MBS branch, Singapore Turf Club as well as the headquarters of Singapore Pools. In 2011, the headquarters was located at Pomo Shopping Mall at Selegie Road but it has since moved to Middle Road. After giving his evidence at the trial, Mr Khoo provided a letter dated 28 September 2016 stating the details of how the outlets are run for Bedok Central, Chai Chee Central, Clementi Central and MBS (D5).

87 For the above reasons, Mr Khoo explained why Singapore Pools had sent the letter of reply to Leow on 8 February 2012. Finally, Mr Khoo confirmed that both the accused and Lian were never hired as an employee, servant or agent at all or to source for potential Singapore Pools outlet or process any applications for members of the public to do so.

88 Leow asked the accused about the said letter from the Singapore Pools (P22). Leow said she continued to believe the accused as the accused told her and Ng that Singapore Pools was still trying to help them to get the licences on a goodwill basis and asked her to ignore the letter.

89 Unfortunately, at the end of the 6-week period from the signing of the statutory declaration by the accused (P21), Leow and Ng still did not receive the refund of any monies from the accused. Leow said the accused tried to buy time by saying that she would check with Singapore Pools and if Singapore Pools was still unable to resolve the matter, the accused would make a police report herself.

Video recording of the meeting at MacRitchie Reservoir (P23 and P24)

90 By the end of March 2012, Leow and Ng told the accused they could not wait anymore and made the accused go down with them to Singapore Pools head office at POMO Centre. It was then that they decided to meet up with the staff at Singapore Pools and the accused finally had no other alternative but to admit to Leow and Ng that she had cheated them of their money.

91 Leow testified that the accused requested Ng and her not to make a police report because she wanted to pay them back all the money. The accused told Leow she had inherited a sum of money from her father and it was a huge sum. As such, she would be able to compensate them but needed time to do so as she was an undischarged bankrupt and the monies were still being held by the Public Trustee's Office. The accused confessed to them that she had taken the money from Leow to gamble, pay her debts and to get herself out of insolvency.

92 On 27 March 2012, Leow and Ng met up with the accused and Ah Tan at MacRitchie Park. The meeting was secretly recorded by Ng (P23). In the video recording, both the Accused and Ah Tan confirmed that they both did not deal with 4D and work for Singapore Pools. The accused further confessed that everything was done by her and Ah Tan was only helping her and he did not receive a single cent. This was confirmed by Ah Tan in the video recording. The accused admitted to cheating Leow and Ng using "POMO"'s name and wanted to pay Leow back the money to settle the matter. The accused also suggested one

month to repay the money and that she would go with Leow to her lawyer's office to document it. The accused once again admitted she had cheated Leow to pay her debts and to gamble and requested Leow to give her a way out based on compassionate grounds as she was already past 70 years old.

93 In the transcripts, besides references to "4D" and "POMO", there were clear references to the location of the Singapore Pools outlets at Orchard, MBS or Chai Chee as the "shops". There were also references made to renovation works done at Toa Payoh outlet and payment for transfer fees.

94 IO Manoj testified that the video recording was provided by Ng to the police in a CD shortly after the police report was lodged by Ng on 15 November 2012. Ng had informed him that the video was recorded using his watch which was already discarded because it had spoilt. Ng had earlier transferred the source files onto his computer before burning them into the CD. The CD was then handed over to the translator.

95 Low Sau Heng, the Chinese interpreter who had translated the video recording into the English transcripts, was offered to the Defence for cross-examination but the Defence did not do so. The entire transcripts of the video recording at the MacRitchie meeting was admitted into evidence through Ng (P24).

Statutory Declarations of both the accused and Wong Yew Nam (P25 and P26)

96 After the meeting at MacRitchie, the accused arranged for Leow and Ng to meet up with her friend, Mr Wong Yew Nam ("Mr Wong") at Golden Mile Tower later that day. Mr Wong agreed to be her guarantor for the repayment of the monies given to her by Leow and Ng. The accused signed a statutory declaration dated 27 March 2012 (P25) to acknowledge that she received a total sum of \$2.5million collectively from Leow and Ng as an interest-free friendly loan and that she would repay the said sum to them in three part-payments on 10 April, 24 April and 24 May 2012 respectively. Mr Wong signed a separate statutory declaration (P26) agreeing to be the guarantor in respect of the \$2.5million friendly loan as per the terms in the statutory declaration executed by the accused.

97 On or about 10 April 2012, the accused was unable to honour the terms of the statutory declaration to pay up the first \$100,000 as agreed by her.

Handwritten notes of loan amounts given by Leow to the accused (P20 side A-B, P41, P27 and P26C)

98 Following from there, on the same day, the accused then went to Leow's home to show Leow that she kept a record of the personal loans which Leow gave to her. Leow said she told the accused to copy the loan amounts onto a piece of paper.

99 The front page of the handwritten paper (side A) of \$180,000 represented the loan amounts which were personal loans given by Leow to the accused. The back page of the handwritten paper represented other sums given to the accused by Leow which were for renovation works done on behalf of Leow. They included renovation works performed at the Toa Payoh outlet and \$25,000 for the renovation of Leow's father's home. According to Leow, the accused signed on the handwritten note on side A to confirm its contents but the year of the date was wrongly dated 2010 instead of 2012. The translated version of the handwritten note has been admitted and marked as P41.

100 After P20 was signed by the accused, Leow thereafter remembered that she had left out a sum of \$7,000 which she had loaned to the accused for the latter's daughter to receive a blood transfusion from the Blood Bank.

101 As such, Leow and Ng arranged to meet up with the accused and Wong again at Thomson Plaza later on 10 April 2012. Leow said Ng wrote on behalf of Leow a handwritten note also wrongly dated 10 April 2010 confirming that the total amount of loan given to the accused by Leow was \$180,000 and \$7,000 (P27).

102 At the same time, Wong signed a handwritten note written by Ng to confirmed that he would continue to guarantee all payments to be made by the accused to Leow and Ng on the following terms:

(i) The accused is to repay \$2,000,000 by 22 April 2012; and

(ii) The accused is to repay all remaining sums by 24 May 2012.

103 The said handwritten note was signed by Wong, Leow and Ng and it was written at the back of the statutory declaration signed earlier by Wong (P26C).

Breakdown of the total amounts payable by the accused to Leow (P28)

104 On 22 May 2012, two days before all payments were supposed to be repaid by the accused to Leow, Leow and Ng met up with the accused at the URA Building at Maxwell Road. She informed them that she needed more time to settle her issues with the Insolvency and Public Trustee's office as her monies were still being held up. Leow said the accused also told them that the accused would be charged in court for borrowing money during her bankruptcy. She would hence be asking her lawyer to apply to the court to draw out a portion of the monies first so that she could pay them back.

105 Leow and Ng wanted the accused to acknowledge on paper a breakdown of the monies the accused had agreed to repay them. A typed statement dated 22 May 2012 (P28) was therefore prepared by Ng and signed by the accused. Ng recalled that the accused signed it after contacting her lawyer. The document stated the total amount owed by the accused was as follows:

6 Singapore Pool Outlets (Toa Payoh, Orchard, Chai Chee, Bedok, Marina Bay Sands, Clementi – including deposits, machine fees, renovation, security deposits)	\$646,900.00
Loan to Joyce	\$180,000.00
Toa Payoh Shophouse Expenses (10 months – Rental, Utility Bills, Town Council)	\$32,924.50
17 months (Jan 2011 to May 2011) Loss of Income for 6 outlets	\$1,530,000.00
Total	\$2,389,824.50

106 The loss of rental for 10 months was suffered by Leow for the Toa Payoh shophouse whilst waiting for the shop to be converted to a Singapore Pools outlet. Ng further calculated potential loss of income for 17 months in respect of the six potential Singapore Pools outlets. The accused disputed signing the document but Ng said that she had signed it at the URA Building.

Audio transcripts (P30) of telephone conversations between Leow and the accused prior to filing of the police report by Ng

107 According to Leow and Ng, the accused continued to make empty promises about paying up and delaying paying for the next couple of months. It included a promise by the accused to let them meet up with the officer in charge of her case at the Insolvency and Public Trustee's Office. On 2 November 2012, a report was made by Ng to the Official Assignee ("OA") (P29 – letter of reply from OA's Office dated 28 November 2012).

108 Audio transcripts of telephone conversation recordings (P30) between the accused and Leow on 12 and 13 November 2012 also revealed that Leow was repeatedly chasing the accused to return the monies given to her and the accused was repeatedly buying time from repaying her. In the transcripts, the accused admitted that she owed Leow "4D money" by promising to let Leow do the 4D thing and it was about a few hundred thousand dollars. This was separate from the private money which Leow loaned to the accused. References were also made to Bedok and MBS outlets.

109 IO Manoj testified that the DVD disc was given to him by Ng on 3 August 2016. This was a few days after he, the DPP and Ng had a meeting where Ng had informed them of the audio recording of the conversations between Leow and the accused. According to IO Manoj, the audio recordings were done using Ng's handphone. Leow would put her own handphone or the house phone on speaker mode when she spoke to the accused. Ng would then transfer the audio files from his handphone to his computer. Copies of the audio files were burned into the DVD disc by Ng and handed over to IO Manoj. Upon receiving the disc from Ng, IO Manoj provided the 22 audio files found in the said disc to the translator. IO Manoj added that Ng informed him the handphone which he had used to do the recording was no longer working and discarded.

110 Ms Peng Wan Joo (PW6), a freelance translator and copywriter, testified in court that she was engaged to prepare the verbatim English transcription of the conversations recorded in 22 audio files provided to her by the police. Besides describing the process in which she had prepared the transcripts, she added that the conversations were conducted in Hokkien. She was proficient in Hokkien, having spoken the dialect for more than 30 years.

111 Eventually, after all else failed, Leow and Ng decided to file the police report against the accused on 15 November 2012 (P31).

THE DEFENCE'S CASE

112 At the close of the Prosecution's case, the Defence did not submit no case to answer and the accused elected to give evidence as part of her Defence.

113 The Defence further called upon the following witnesses to testify on behalf of the accused:

- (i) DW2 – Mr Chan Siew Hoong Lawrence (Paralegal of law firm M/s N.S. Kang where the accused was a former client);
- (ii) DW3 – Mr Wong Yew Nam (Retiree and close friend of the accused); and
- (iii) DW4 – Mr Khoo Ong Lai (Renovation contractor).

Documents that were not signed by the Accused

114 At the trial, the accused denied signing exhibits P25, P27 and P28.

P27 – Handwritten note of loans owed by the accused to Leow

115 In the Defence's closing submissions, Defence counsel submitted that nothing turned on the accused's denial in signing P27. This was because in respect of P27, the accused confirmed in evidence that she had received a personal loan of about \$170,000 from Leow. She further received \$7,000 from Leow on a separate occasion at Gleneagles Hospital. Moreover, she did not deny signing the handwritten note P20 made by her.

P25 – Statutory declaration of the accused

116 In respect of P25, Defence submitted the accused got confused with the number of exhibits which had to flip black and forth on in order to testify. At the same time, the accused confirmed at multiple points of her testimony that she had in fact signed a statutory declaration for \$2.5million in favour of Leow and Ng. Therefore, she merely did not recognise P25.

117 Further, Mr Chan Siew Hoong Lawrence ("Mr Chan") confirmed in evidence that the accused had met him together with Leow and Ng at a café located on the ground floor of Golden Mile Tower on 26 March 2012 during lunchtime. Mr Chan, who is a paralegal, testified that the accused was a client of the law firm he was working at.

118 Mr Chan added that Leow informed him the accused owed her money and she wanted this to be documented in "black and white" between the parties. Mr Chan asked Leow how much was the amount owed and Leow replied \$2.5million. Leow suggested for Mr Chan's law firm to do up the documentation and Mr Chan to be the witness. Mr Chan replied immediately that he would not do so because the accused is a bankrupt. The accused replied that "Mr Wong" would be the guarantor and he was on his way. After he finished his lunch, Mr Chan said he could not help them and the accused told Leow and Ng that another law firm located on the 19th floor could do it. Before Mr Chan left for his office, Mr Wong Yew Nam ("Mr Wong")(DW3) arrived.

119 Mr Wong is an 84-year-old retiree. He said he is a very close friend of the accused. He confirmed in evidence that he had executed the statutory declaration on 27 March 2012 (P26) as a guarantor for the accused. Mr Wong recalled on that day, the accused rang him up in a quivering voice and said she required someone to be her guarantor for \$2.5million. As such, within an hour, he met her at the café at the ground floor of Golden Mile Tower.

120 When he arrived, Mr Wong confirmed he was introduced to Leow and Ng by the accused. He was also introduced to Mr Chan as a lawyer. The accused informed Mr Wong that Leow wanted to have a declaration executed for the sum of \$2.5million owed to Leow. The accused asked Mr Wong if he could stand as a guarantor and Wong replied "no problem". Mr Wong confirmed Mr Chan's evidence that the latter's firm could not do up the documentation as the accused is a bankrupt.

121 Mr Wong said he went with the accused, Leow and Ng to another law firm on the 19th floor of the same building to execute P26. He saw the accused sign her statutory declaration, P25. The documents were prepared by a Malay lady. Mr Wong added that both he and the accused signed the documents because otherwise, Leow had threatened to report the accused to the police and the Official Assignee. He believed the accused was under duress because of the threat.

122 Mr Wong recalled the second meeting with Leow and Ng together with the accused on 10 April 2012 at Thomson Plaza. At the said meeting, Mr Wong said the accused told Leow she could not pay up any money now but on later dates. Once again, Leow threatened to report the accused to the police. Mr Wong agreed to sign the handwritten note (P26C) to once again guarantee payment by the accused to Leow and Ng on the extended dates proposed by the accused.

123 During cross-examination, Mr Wong agreed that he only knew the accused owed Leow and Ng \$2.5million. However, he did not know why the accused owe Leow the said amount of money and he had never seen any receipts or records of the monies owed. Neither did he see any cash or cheques being exchanged between them. He had only stood as a guarantor because the accused requested him to.

P28 - Breakdown of the total amounts payable by the accused to Leow

124 The accused denied signing P28 because the signature at the URA Building as the signature did not resemble her usual signature at all. This was despite the fact that she had earlier signed a statutory declaration on the sum of \$2.5million owed to Leow and Ng. The breakdown of the total amount payable by the accused to Leow was a lower figure of \$2,389,824.50.

The monies given by Leow for the Toa Payoh outlet was for renovation works of the unit generally

125 The accused said she did receive cash amounting to \$10,000 from Leow as reimbursement for payment to the contractors in respect of the renovation works performed at Leow's Toa Payoh unit. This was however not due to converting the unit to a Singapore Pools outlet but to renovate the unit generally. The renovation works did not involve installing betting counters or glass windows in order to set up a typical Singapore Pools outlet. Otherwise, Leow would have queried the accused when she visited the unit several times during the renovation period.

126 The accused called upon Mr Khoo Ong Lai ("Mr Khoo"), the renovation contractor who did the works for the Toa Payoh unit to testify on her behalf. Mr Khoo informed the court the scope of works performed at the unit involved largely tiling and painting works. The unit was in a dirty and poor condition. Mr Yap, his friend, did the electric works separately.

127 Mr Khoo said he only met Leow halfway through the renovation works. He met her for about three or five times and she always came to the unit with her son to check on the renovation works. He recalled the only time she asked him to do something for the unit was to patch up the holes, repair the leaking problem and replace the staircase doors at the unit.

Otherwise, he always dealt with the accused and took instructions from her. He was also paid more than \$10,000 by the accused for the renovation works done by him. Lastly, he did not know what the unit was going to be used for when he did the renovation works.

Civil action court documents proved the accused's defence that the monies given by Leow to the accused were loans

128 Defence submitted that the court papers filed by the lawyers of Leow and Ng in respect of their civil action against the accused clearly showed that the monies owed by the accused to Leow were loans given to the accused and not for the purpose of setting up the six units at various locations for operating Singapore Pools outlets. The court papers were filed by the lawyers after having taken instructions from Leow and Ng as well as from documents provided by them.

129 The relevant court papers were submitted by the Defence. The original pleadings (D3) showed only Ng suing the accused and Mr Wong as her guarantor. The claim to recover \$2.5million was based on the statutory declarations signed by the accused and Mr Wong. There was no mention at all about monies being paid to obtain licences to operate six Singapore Pools outlets.

130 Subsequently, Ng sought to amend the pleadings not once but twice (D4). They included adding Leow as the 2nd Plaintiff and particulars of the representations made by the accused to Leow and Ng for operating the six Singapore Pools outlets which led to the sum of \$2.5million being owed by the accused to them. The Defence argued that both Ng's supporting affidavit for the amendment of the pleadings and the various versions of the amended pleadings were inconsistent with the evidence proffered by Leow and Ng at the trial even though they were advised by their own lawyers for the civil action.

Leow and Ng could not have been so ignorant to have given the accused large sums of money without seeking any official document from Singapore Pools

131 The Defence argued that both Leow and Ng were not inexperienced businessmen. Ng was a savvy and experienced businessman with several properties and overseas investments. He had the experience of making applications to the Government and other large business entities. Leow worked in her family's business since she was young, selling electrical appliances and assisted her father who ran the store. They were also landlords to a number of tenants, renting out various locations to various businesses. Leow ran a cut fruit store at the Toa Payoh unit for many years.

132 Yet, the Defence was amazed that Ng was able to hand over large sums of cash or cash cheques to the accused as claimed by him without asking for or having received any documents from Singapore Pools over a period of more than a year. This was particularly since the accused's alleged promises to them about the length of time to process their applications were repeatedly broken. They did not even go to Singapore Pools directly to check until it was too late. As such, the Defence submitted that Ng and Leow's evidence should not be believed and Leow was not merely a "foolish" old lady being cheated by the accused.

Leow and Ng were not credible witnesses and were inconsistent in their testimonies on the versions of events

133 The Defence argued that Leow and Ng were not credible witnesses and should not be believed. This was because the police report lodged by Ng was inconsistent with the papers filed in court for their civil action against the accused as well as the evidence which they have given in court almost 5 years after the alleged incident. At times, they even contradicted each other. Further, little weight should be given to the table for the cost breakdown in respect of the six Singapore Pools outlets, P1 as it was made about one year after the police report was made.

134 Ng further alleged that the accused had asked him and Leow to write to HDB in June 2011 for the Toa Payoh unit to be converted to a Singapore Pools outlet i.e. for a change of trade. A letter of rejection was received more than a month later but this was not produced in evidence before the court. Despite that, the Defence submitted that it was ingenuous for Leow and Ng to send a letter to Singapore Pools (P19) more than half a year after HDB's rejection of their application for a change of trade purely based on Ah Tan's purported suggestion.

135 The Defence further argued that little weight should be given to both the video and audio recordings produced by Ng way after the police report had been filed by Ng. This was especially since both the recording devices of these recordings were all supposedly no longer functioning and had been discarded when the copies of them were provided to the police. In the same vein, it was rather convenient for Ng to give the excuse that the cheque books which he had issued the cheques from were no longer available as evidence at the trial. This was especially since they were material evidence.

136 Finally, the Defence highlighted that it was all too easy for Ng and Leow to merely purport that substantial sums of money were handed over to the accused, without more, by saying it was from the hundreds of thousands of cash stored in their home in a safe deposit box. This gave the impression that they were simply attempting to “work backwards” and make inferences as to what were the sums which Leow had given to the accused as personal loans.

137 As such, the Defence submitted the Prosecution’s case must fail since it was premised on only the evidence of both Leow and Ng. Instead, it said that the accused should be convicted of an offence under Section 141(a) of the Bankruptcy Act (Cap 20) for obtaining loans from Leow and Ng totalling \$305,900, which were the amounts in the cheques received by her, without disclosing her status as a bankrupt.

ELEMENTS OF THE OFFENCE

138 Both the prosecution and the defence were in agreement that in order to prove the present cheating charges beyond a reasonable doubt, prosecution must establish that:

- (i) The victim was deceived by a false representation which the accused knew was not true;
- (ii) The accused had dishonestly or fraudulently induced the victim into delivering the property to the accused or any other person with the deception; and
- (iii) The victim delivered up the property to the accused or any other person as a result of the inducement. (See *Gunasegaran s/o Payadiasamy v PP* [1997] 2 SLR(R) at [42]-[44])

139 In respect of the abetment by intentional aiding charge, prosecution must show that the accused had:

- (i) Intended to facilitate the commission of the cheating offence;
- (ii) Knew the circumstances constituting the cheating offence; and
- (iii) Voluntarily did an act of positive assistance to facilitate the commission of the cheating offence. (See *Jimina Jacee d/o DC Athansius v PP* [1999] 3 SLR(R) 826)

140 With the elements of the offence in mind, I shall now analyse the evidence presented before me.

ANALYSIS OF THE EVIDENCE

Whether Ng should have been named as a victim in the charge

141 The Defence submitted that only Leow was named as the victim in the charge. Yet, Leow was not the complainant and did not submit the FIR.

142 I noted that whilst the FIR was made by Ng, he made it together with and on behalf of his mother, Leow. The account of Leow was unequivocally stated in the FIR. What was critical was Leow’s evidence that the representations by the accused on the need to pay various sums of money to set up the six Singapore Pools outlet was always made by the accused to Leow. It was Leow who had believed and agreed to the accused’s representations. Ng, being the son of Leow, was usually with his

mother and he heard the false representations made by the accused to Leow. Ng accompanied Leow for the site visits to the various outlets. As a joint-account holder, he further helped to prepare the cash or cheques in order for Leow to pay the accused.

143 For all intents and purposes, I am of the view that Leow was the true victim that had been cheated by the accused as the false representations were made to her by the accused. It was therefore sufficient for only Leow to be named as the victim in the charges. There was no requirement that Leow must have filed the FIR. It was also not incorrect for Ng to state in the FIR that he had been cheated by the accused. This was because whilst the false representations were made to Leow by the accused, there was sufficient evidence adduced to show that the monies paid to the accused belonged to both Leow and Ng. The cash cheques, for example came from their joint-account.

Evidence adduced by the Prosecution supported both Leow's and Ng's version of events

144 The defence raised the argument that the FIR was inconsistent with the evidence of Leow and Ng given in court. Yet, the FIR was supposed to have been the most contemporaneous document as it was done after the fraud was unravelled and Leow could not get her monies back from the accused.

145 I would agree with the prosecution that any inconsistency in the evidence given by Leow or Ng in court with the FIR was not material as they were either supported by other objective and more contemporaneous documents produced or did not detract from the chronology of how the events had unfolded as a whole.

146 The content of the FIR was largely supported by the documents produced by the Prosecution. They included records from independent third parties like the banks [P2-P6, P10-P18, P32-33], Singapore Pools [P19, P22] and AI Jewellery (P38). These documents also supported the periods where the events were supposed to have taken place, for example, in respect of the accused's proposal to the setting up of new Singapore Pools outlets to Leow for the first time, the various documents supported Leow's and Ng's version that this had happened in the early part of January 2011. The first three new outlets proposed by the accused, namely MBS, Clementi and Bedok, all happened around the same time between January and February 2011 and payments were indeed made by Leow to the accused as borne out by the documents.

147 P1, a table showing a breakdown of how the sum of \$646,900 was paid to the accused for the six Singapore Pools outlets, was also consistent with the other objective evidence produced. This was so even though it was done by Ng about a year after the FIR was filed at the request of IO Manoj. In fact, Ng had forgotten when P1 was created.

148 Nonetheless, P1 was still a reliable evidence as it was corroborated by the other objective evidence before the court like the various records from the banks. The total breakdown on the amount of monies paid out for the six Singapore Pool outlets was further consistent with what was stated in P28, which was created on or about 22 May 2012. Ng further explained in court that P1 was prepared by making reference to the bank statements. I hence disagreed with the Defence that P1 was created as a result of "counting backwards". I further disagreed that P1 was inaccurate or unreliable if the cheque books of the various banks were no longer available simply because the prosecution had provided the relevant bank records from the various banks.

149 Further, Ng had explained any inconsistency of the FIR by producing other supporting documents like the video recording of their site visits of the outlets to MBS, Bedok and Clementi (P40). This video was undisputed by the accused and by and large corroborated what was stated by Ng in the FIR. The video affirmed Leow's evidence that the accused had indeed brought them to see the outlets on the pretext of operating new Singapore Pools outlets.

150 Other finer details like types of Singapore Pools outlets which they had visited, i.e. new or existing outlet, but were left out in the FIR were not material facts. I doubt very much this was even something Leow or her son could comprehend at that material time if they were not given any background knowledge about the differences amongst them. Leow confirmed this to be so at the trial. Ng said he did not know at that time since the shop unit did have a Singapore Pools sign, whether it was run directly by Singapore Pools or by an authorised retailer. Similarly, for other "outlets" like Nex Shopping Mall and Bishan which the accused had also brought them to visit, they were not material facts even though these outlets were not stated in the FIR since monies were not paid out by Leow for these outlets. On the contrary, this only endorsed the web of lies concocted by the accused.

151 The accused never denied signing both the handwritten note (P7) and the statutory declaration (P21) in January 2012. Both documents mentioned the "3 outlets" or "3 business outlets". P7 confirmed that Leow had paid a sum of \$180,000 to the accused as a "cash deposit for the 3 outlets" and the money would be returned to Leow upon "terminating the contract".

152 As for the video and audio recordings (P28 and P30 respectively), Defence argued that besides placing little weight on the evidence from them, the presumption in relation to electronic records pursuant to s116A of the Evidence Act [Cap 97] ("EA") should also not be accorded to them. This was because the source of the recording (i.e. the devices) were not produced in court. The Defence further urged the court to invoke the presumption under s116(g) of the EA.

153 The onus was on the Defence to raise a reasonable doubt about the presumption. Having said that, one must be mindful that given the passage of time, it might not be possible for these devices to be operational now and be of any useful value even if they were to be produced in court. Further, evidence was led as to how the recordings were made and then transferred to the laptops before being copied into the CD or DVD discs by Ng. The transcripts of the recordings were similarly not challenged by the defence, which in any event flowed generally with the video footages or audio sounds that were recorded.

154 More pertinently, the meeting at MacRitchie Reservoir between Ng, Leow, Ah Tan and the accused was not disputed or challenged by the accused. This was clearly evident in the conditioned statement (P34) given by the accused during investigations. In fact, the accused replied in her statement she told Lian to tell Leow at that meeting if Leow asked about the shops, he was to reply "yes". This was because he knew about the available shops as he was the one who recommended the shops to the accused, which she in turn recommended to Leow so that she could get a loan from Leow. At the very least, the accused did not deny that she had recommended "shops" to Leow on the pretext of getting money from Leow at the MacRitchie meeting.

155 I must further point out that whilst the accused's testimony in court given much later was different from her conditioned statement in that she refused to admit that she was "Female A" and had called Leow "Third Sister" in the transcripts, there was really no reason for the court to reject the evidence found in the accused's conditioned statement since it was not recorded under any inducement, threat or promise.

156 Even in the accused's cautioned statements (P42-P53), save for the amount of money which she had taken from Leow, the accused never denied the rest of the facts stated in the charges. When the cautioned statements were recorded, the accused was clearly well aware of the nature and consequences of all the charges she was facing. Nonetheless, she never even denied making false representations in the name of "4D" or positively asserted that the monies given to her were "personal loans".

157 Similarly, the accused also did not deny having telephone conversations with Leow on the monies owed during the relevant period in November 2012 where the audio recordings of their conversations were made. Her only contention was her flat denial in making references to 4D in her conversations. Once again, the transcripts were not challenged by the defence. In fact, when she was asked during cross-examination about the reference made to "4D", the accused actually contradicted herself by replying that she had actually suggested to Leow to write to Singapore Pools if she wanted to obtain the licence to operate such an outlet. Other than the fact that the iPhones used to record these conversations were no longer available, I did not see how that was sufficient for me to give little weight to these evidence.

158 On the whole, I was satisfied that no prejudice was caused to the accused even though the original recording devices of the video and audio recordings were not produced. In any case, the Defence appeared to be adopting conflicting positions in challenging the weight of the recordings of these events. On one hand, the accused said she never mentioned at the MacRitchie meeting or during the telephone conversations that the monies given by Leow to her was for the purpose of setting up of Singapore Pools outlets but always as loans because those incriminating portions amounted to an admission on the accused's part that she did cheat Leow by making a false representation. She also confessed that Lian was asked to help her along by facilitating to be a Singapore Pools employee and he did not receive a single cent for doing so.

159 If the defence was challenging the reliability of this evidence, they should not on the other hand rely on the same evidence in support of its argument that the amounts given by Leow to the accused were personal loans to feed her gambling habits or pay for the medical expenses of the accused's family members who were ill when those parts of the evidence suited the accused's convenience.

Representation by the accused on the need for the renovation works at the Toa Payoh outlet

160 The pertinent issue was whether the accused had represented to Leow that she needed to pay \$5,800 for renovation works at the Toa Payoh outlet in order to operate a Singapore Pools outlet.

161 I accept both Leow and Ng's evidence that Leow had sent a letter to HDB for a change of trade to operate a 4D betting outlet based on the representation from the accused. It was also because of the representation from the accused that Leow later wrote a letter to Singapore Pools (P19) to inform them that the renovation works for the shophouse to operate as a betting outlet has been completed. There would have been no reason for Leow and Ng to have done all these if there had been no such false representation made by the accused.

162 Whilst defence argued that it was astonishing that Leow would even attempt to write to Singapore Pools even though HDB had earlier rejected their application, I did not find it surprising that Leow would have simply followed whatever the accused informed her to do. In fact, both applications to HDB and Singapore Pools revealed that the accused had consistently informed Leow that the intention was to convert the Toa Payoh shophouse into a betting outlet and as such, Leow followed the necessary steps she was asked by the accused to do.

163 Defence further sought to argue that Leow did not question why there were no betting counters or glass windows installed after the renovation works were completed. I saw no reason to disbelieve Leow's reason that Ah Tan did take measurements of them and the accused had informed her that Singapore Pools' contractor could pre-fabricated these items in a factory before installing them at the outlet.

164 In any case, whether or not betting counters or glass windows were actually installed after the renovation works had been completed was neither here nor there. The point really was what exactly was represented to Leow before she gave the accused the money. Leow left the renovation works to the accused and Ah Tan, including making payments to the contractors, and Leow wrote to HDB and Singapore Pools to obtain the relevant permits based on what the accused had told her. All the evidence must be considered as a whole.

165 Mr Khoo, one of the contractors who did the renovation works, confirmed that he did not know what the renovation works at Toa Payoh outlet was for and he always dealt with and took instructions from accused most of the time, having met Leow and Ng three or five times halfway through the renovation works. He was only asked by the accused to perform tiling and painting works. Another contractor was doing the electrical works. He also received payment of more than \$10,000 directly from the accused for the renovation works. At the trial before the court, the accused could not even recall the amount of monies she had received from Leow to pay for the renovation works.

166 The video recording for the MacRitchie meeting (P24) also confirmed Leow's evidence that the accused had represented to Leow that Ah Tan would help to ensure the Toa Payoh outlet would be renovated and be ready to operate a Singapore Pools outlet. In reality, it was recorded in the video that the accused had informed Leow there would be a delay in operating the Toa Payoh outlet because the accused was told by her friend to wait.

167 Defence further argued that Leow was bothered to visit the Toa Payoh outlet when the renovation cost was only \$5,800 but did not even bother to visit the MBS outlet when the renovation cost paid by her to the accused was \$63,300. In that regard, the Defence said Leow's behaviour was unbelievable without having put this question to her. One could only speculate, without more, that the Toa Payoh outlet actually belongs to Leow whilst the MBS outlet did not. Leow was informed by the accused she had to do the renovation works before obtaining the licences for the Toa Payoh outlet whilst she did not even get a response as to the outcome of her "application" submitted through Ah Tan on the MBS outlet to even visit the outlet on the renovation works.

168 On the facts, I am satisfied that Leow had paid a portion of the money in the sum of \$5,800 towards the renovation works for the Toa Payoh outlet in the belief that this was necessary for the said unit to be converted to a Singapore Pools outlet.

Credibility of Leow and Ng as the victim and the complainant

169 Generally, as the incident happened quite some time back between 2011 and 2012, I would agree that minor inconsistencies in the evidence given by all the witnesses might be due to the passage of time since the incident to the time of the trial. Hence, the witnesses would have to refer back to documents to jog their memory. I agree with the prosecution the critical question to ask if an inconsistency is material is whether the evidence of the witness, in comparison to previous statements made by him, appeared to have been produced by incompatible beliefs.

170 Defence argued that the prosecution's case stood or fell on the credibility of Leow and Ng. As pointed out by me earlier, there were other objective evidence that was produced by the prosecution in support of the evidence given by Leow and Ng.

171 Regardless, I found both Leow's and Ng's evidence externally and internally consistent on the material facts. The general dates and periods matched the sequence of events as a whole, taking into account all the evidence before the court. Whilst Leow and Ng might have forgotten certain information at times, they were generally consistent with their version as to the accused's modus operandi in getting them to give her money to set up the six Singapore Pools outlets and what the monies given to her were used for.

172 They were also consistent in their version as how they had discovered the fraud subsequently and attempts at recovering the monies back from the accused. It would have taken a very elaborate effort on the part of Leow and Ng to fabricate the entire story simply to frame the accused in order to get back at her for the monies they had loaned to her, as suggested by the Defence. Not to mention that there was clear corroboration through independent documentary evidence.

Too much cash at home?

173 The Defence argued that it was incredible to believe Leow had given to the accused several times cash of not insignificant amounts from the safe in Leow's house. To me, this was a bare assertion without more. In any event, one must refocus back to the primary issue at hand. The accused did not deny the following:

- (a) She received personal loans amounting to \$180,000 from Leow by signing P20 and P27A;
- (b) She received \$1million from Ng for "3 business outlets" by signing P21; and
- (c) She received \$2.5million from Leow and Ng by signing P25.

174 The crux of the matter was whether she had obtained these monies even if they were in cash from Leow and Ng by making a false representation to them that they can set up six Singapore Pools outlets by giving the monies to her for her to give to Lian to help them do so. It was a surprise for the Defence to even argue that Leow could not have stored so much cash in her house, particularly since the accused herself had kept a record of the cash which Leow gave to her as personal loans as written by the accused in P20. Leow also said that she would also give the accused cash from her bank accounts besides the cash from her house. Monies were usually however passed to the accused at Leow's house.

175 The Defence also sought to argue that there were times where it was not necessary to have given the accused cash and cheques since it was evident from the bank records that Leow had sufficient monies to pay the entire amount to the accused using a singular cheque from the checking account (i.e. P18 – HSBC cheque of \$10,000). This argument is to me, neither here nor there. Leow already testified that for a few of the transactions, Leow would pay a portion of the amount requested by the accused in cheque and another portion in cash on a separate day. However, Leow did not keep a record of the cash payments and when she gave the cash to the accused.

176 From the evidence, the accused must have received both cash and cheques from Leow. If truth be told, the accused did not dispute having received cash from Leow several times but the accused merely claimed that they were meant for running errands for Leow and her family. Leow even said she trusted the accused too much that she had passed cash to her to set up the Singapore Pools outlets without keeping records or made the accused sign for it. Hence, looking at the evidence in totality, I believe Leow's evidence that the accused is quite acquainted to receiving large amounts of cash from Leow.

Civil proceedings commenced by Leow and Ng against the accused

177 The defence raised another argument that the papers for the civil proceedings filed were inconsistent with Leow's or Ng's version of the matter. One of the key reasons raised was that Leow was not even brought in as a plaintiff in the action in the initial stage of the proceedings.

178 Evidently, those proceedings were not before me. Importantly, it must be noted that the civil proceedings were commenced quite sometime after both the statutory declarations and the FIR were executed. It was clearly evident that by the time the statutory declarations were filed, Leow and her son knew that they were being cheated of their monies and were making desperate attempts to recover them from the accused.

179 Moreover, the first writ of summons was based purely on the statutory declarations signed by the accused and her guarantor upon the advice of their lawyers. This was perhaps a way to seek recovery of the monies by obtaining a judgment in the fastest possible way. Regardless, the writ was subsequently amended to flash out the how the monies owed by the accused came about and this was not inconsistent with documents like the FIR, P7, P25, P27, P28 or P1 and even the various witnesses' testimonies in court.

180 Therefore, to say that Leow and Ng were inconsistent in their version as to what had happened from the court documents filed for the civil proceedings seemed to me to be rather farfetched given the context of how the events had unfolded.

Illogical yet experienced business people?

181 Defence raised another argument that it was highly incredible or illogical that Ng and Leow, being experienced businessmen, could not have believed such too good to be true representations made by the accused to them so as to be able to operate six Singapore Pools outlets in Singapore. Leow said in evidence that she ran a small family business and Ng said he does small businesses. No doubt, both are businessmen.

182 Taken at its highest, even if I accept the Defence's position that Ng and Leow were experienced businessmen, the fundamental question was whether such false representations were made by the accused and believed by the victims to part with their funds.

183 To quote Warren Buffett "I learnt to go into business only with people whom I like, trust and admire." Even good and experienced businessmen rely on a fundamental principle before they decide on whether to venture further into a business deal: Trust.

184 The relationship between Leow and the accused were not merely strangers or ordinary friends. Neither were they trading at arm's length. The accused was a close family friend of Leow's younger brother and the accused actually called Leow "Third Sister". This suggested a more than close relationship between the accused and Leow's brother. Hence, it was understandable for Leow to have lowered her guard and believed what the accused told her. In court, Leow said she trusted the accused and did not believe the latter would cheat her given the circumstances. On hindsight, Leow was honest enough to even say she was stupid to have believed the accused.

185 The level of trust which Leow had for the accused became plainly obvious when even after the letter of rejection came from Singapore Pools, Leow and Ng continued to believe the accused blindly when she told them she would be able to get Ah Tan to help them behind the scenes to get things sorted out. By that time, the victims had invested so much that their judgment became clouded.

186 In the same vein, the accused herself was also overcome by greed. Perhaps initially, the accused decided only to use the same tactic to get some money from Leow and Ng to tide over her personal needs. When she realised that the tactic worked well after several times, she got emboldened and decided to perpetuate the ruse until this was no longer sustainable without having the need to explain to the victims where the monies had gone to.

187 To quote Socrates "He who is not contented with what he has, would not be contented with what he would like to have."

188 As can be seen, the fact that both Leow and Ng were experienced businessmen did not mean that they could not be cheated. There was visibly a breach of trust on the part of the accused in the relationship which Leow had with her. Fundamentally, when the realisation came for them that nothing the accused had promised them was forthcoming, they gradually began to become worried and as businessmen, they made the accused sign the various documents and statutory declarations plus requested the accused to have a guarantor. They even started to claim for loss of rental income in relation to the delay in setting up the Singapore Pools outlets from the accused.

189 All these actions showed that they were trying to find methods to protect their interests in order to recover not only the monies which they had paid out to the accused but also potential losses. Since, the accused did not deny signing the various documents and statutory declarations save for P28, it was evident to me that the accused clearly understood the monies she had signed for did not amount to a personal loan to her.

190 Hence, the accused's attempt to divert blame from herself to the victim appeared to be an ingenuous red herring. The fact that Leow was, in her own words, "stupid" to have been duped did not detract from the fact that she and Ng were credible witnesses. I declined to impeach the credibility of these 2 witnesses pursuant to s157 of the EA as such.

Credibility of the Accused put to question

191 On the other hand, I found the accused a rather evasive and inconsistent witness. The discrepancies in her evidence were clearly not due to mistakes in recollection.

192 She was found lying in her condition statement (P34) where she said that she had only introduced "outlets" to Leow or asked Ah Tan to do so in order to get loans from Leow. She claimed that the outlets were supposed to be used for trading and internet cafes. Yet when asked why she had cheated Leow and Ng, she claimed that she did not cheat them on 4D but on "personal loans" for herself. I am acutely mindful that the video of recording of the site visits (P40) to MBS and Bedok particularly did not seem to reveal that the accused had shown Leow the outlets to be used for trading and internet café purposes.

193 The Defence also tried to rely on P34 to explain why the accused had "overlooked" to explain her failure to deny the Singapore Pools false representations in her cautioned statements. In my view, all the evidence must be looked at in totality. At the barest minimum, the accused must have admitted to cheating Leow save for the amount which she said was not that much.

194 Even so, the accused, vacillated on the amounts of monies that were loaned to her as personal loans and could not give cogent reasons as to why large amounts of cash cheques or cash were passed to her. In P34, she said it was slightly more than \$400,000. In the cautioned statements, she said it was not that much. At the trial, she wanted the court to simply believe it was only for the sums in relation to the cash cheques give to her i.e. \$305,900.

195 Next, the accused conveniently now claimed she did not sign certain documents even though the signatures appeared to be consistent and resembled her signatures found on other documents. Yet, she did not seek to disprove her assertion by engaging a handwriting expert to prove that she did not sign those documents.

196 Particularly, the accused was found to be untruthful when she completely denied signing P25 during cross-examination and re-examination. Yet, in examination-in-chief, she claimed she had signed it under duress. Interestingly, in the next breath, she did not deny in evidence that she indeed owed Leow and Ng a total sum of \$2.5million. Her diametrical change in position was disconcerting to say the least.

197 For P27, although she denied signing this document, she did not deny that the contents stated in the document were true.

198 The evidence adduced from the accused's witnesses at the trial did not support her defence. Mr Chan (DW2) did not witness the signing of any of the documents. Mr Wong (DW3) said he felt the accused had signed P25 under duress because Leow and Ng threatened to report the accused to the police if she did not do so was self-serving, since he had clearly agreed to

sign as a guarantor voluntarily. What he said appeared to be a mere afterthought. Defence papers of the civil trial were also not produced to show that the defence of duress was pleaded by the accused. Document was signed in a law firm according to the evidence of the parties and the accused would have been advised adequately before she had agreed to execute the document.

199 It was therefore a convenient excuse for the Defence to simply argue that the accused had been confused with the number of documents before her at the trial when she denied signing the handwritten note (P27) and her statutory declarations (P25).

200 The accused then claimed she did not sign on the table of the tabulation of the \$2.5million owed by the accused to Leow (P28), which included the total amount paid out to her for all six Singapore Pools outlets. From a physical inspection of the document, the signature did not defer or defer significantly, including the handwriting for the date, from what she had signed in other documents including P7.

201 Ultimately, the onus is on accused to prove that the signature was not hers as he who exerts a fact to the contrary must prove it. Otherwise, this would amount to a bare denial. In any case, there were other evidence which affirmed the contents stated in P28. For example, the breakdown for the amount of \$646,900 was consistent with the evidence found in P1. P1 in turn was supported by the various bank records. As for the \$180,000 personal loans given by Leow to the accused, this was supported by both P20 and P27 and signed by the accused. As for the Toa Payoh shophouse expenses, this was consistent with P20 and also signed by the accused. The only item not accounted for in any other document was the loss of income for the six outlets for 17 months. Even then, the total amount stated in P28 was not far off from the statutory declaration P25 signed by the accused.

202 Given the circumstances and without anything more, I am of the view that the accused had in all probability signed P28.

Why I did not believe that the sum of \$646,900.00 were personal loans given by Leow to the accused

203 Other than the \$180,000 which the accused has never denied were personal loans given to her by Leow, a portion of the monies from the \$2.5million after deducting \$646,900 given by Leow to the accused were damages or potential loss that had arisen as a result of the months of delay in obtaining the Singapore Pools outlet licence. They were not monies that were already given to the accused as such. As rightly pointed out by the Defence in its reply submissions, if it was indeed a personal loan for \$2.5million made to the accused, Leow would have had no genuine claim to it at all because Leow did not actually give the accused \$2.5million.

204 Similarly, in respect of the P21 statutory declaration of \$1million signed for "3 outlets" on 26 January 2012, not all the monies were given to the accused at that time. She had signed it to guarantee the "commencement of business on a scheduled date" as promised to Leow and Ng. There would have been no need for the accused to agree to compensate Leow for the delay if there was no Singapore Pools story.

205 Further, if the entire Singapore Pools story was not correct, there was no reason for the accused to have admitted to the loan of \$2.5million and signed for it in the statutory declaration, whether by duress or otherwise. One must bear in mind that \$2.5million is not a small sum of matter for someone to readily agree that she had borrowed this amount of money if she had not. Worse, the accused was able to find a guarantor readily to guarantee the sum of \$2.5million for her in a bid to save her from being reported to the police.

206 The only possible reason for her to have done so was that the representations by her about the "Singapore Pools story" was true and she was desperate to placate Leow so that Leow would not go to the police to report against her about the Singapore Pools cheating scam. It was a desperate attempt by the accused to buy time for the lies she had conjured.

207 Furthermore, as mentioned earlier, several of the cash cheques given were not in round numbers. Consequently, this suggested that there was a particular purpose for Leow to hand over the cash cheque to Leow each time. This was unlikely so if it was for personal loans. Additionally, if the cheques were truly for personal loans, there was no need for Leow to have given the accused cash cheques but they could be issued to the accused as the payee's name. The accused was unable to give a credible explanation for this.

208 Following from there, it would clearly be of pure coincidence and convenience for the accused to give the excuse that all payments received by her from Leow and Ng in the forms of cheques only were all personal loans given to her by Leow, without more. She knew she had no choice but to admit to them as they were all encashed by her and there was no other way for her to hide her footprints. Her accounts given were riddled with lies so much so that she was bound to trip up when seeking to mask them.

VERDICT

209 All things considered, having done a detailed analysis of the evidence, I was of the view that overwhelming evidence had been adduced by the prosecution to prove its case in respect of the 12 charges against the accused beyond a reasonable doubt. This included the abetment of cheating by intentional aiding charge even though Lian did not have the mental capacity to testify in court.

210 On the contrary, I found the accused evidence rather incredible and difficult to believe. Accordingly, I had no alternative but convicted the accused and found her guilty as charged.

SENTENCE

Antecedents

211 The accused was traced with a string of antecedents, including similar cheating antecedents which went as far back as 30 years ago:

No.	Date of Conviction	Offence and Ordinance	Sentence
1.	09.05.1981	<ul style="list-style-type: none"> · Cheating: S420, Cap 103 · Cheating: S420, Cap 103 	<ul style="list-style-type: none"> · 1 day's imprisonment with \$300 fine · 2 day's imprisonment with \$1,000 fine
2.	05.11.1983	<ul style="list-style-type: none"> · 3 Cheating Charges: S420, Cap 103 · Criminal Breach of Trust as an Agent, S409 Cap 103 · Forgery using a forged document: S465 R/W S471, Cap 103 · 7 Cheating Charges: S420, Cap 103 	<ul style="list-style-type: none"> · 9 months' imprisonment for each Charge · 3 months' imprisonment · TIC · TIC for all 7 Charges <p>All sentences to run concurrently</p> <p>Total: 9 months' imprisonment</p>
3.	30.4.2003	<ul style="list-style-type: none"> · 2 Bankrupt obtaining Credit: s141(1)(a), Cap 20 · Bankrupt obtaining Credit: s141(1)(a), Cap 20 · 2 Bankrupt obtaining Credit: s141(1)(a), Cap 20 	<ul style="list-style-type: none"> · 3 months' imprisonment for each Charge <p>(both to run consecutively)</p> <ul style="list-style-type: none"> · 4 months' imprisonment · TIC for 2 Charges <p>Total: 6 months' imprisonment</p>

4.	12.06.2003	<ul style="list-style-type: none"> · 2 Cheating & Abetment of Cheating Charges: S420 R/W S109, Cap 224 · 2 Cheating Charges: S420, Cap 224 	<ul style="list-style-type: none"> · 15 months' imprisonment for each Charge (both to run consecutively) · 12 months' imprisonment for each Charge Total: 30 months' imprisonment
5.	28.11.2003	<ul style="list-style-type: none"> · Cheating: S420, Cap 224 · Cheating: S420, Cap 224 	<ul style="list-style-type: none"> · 10 months' imprisonment (sentence to run consecutively after the sentence dated 12.6.2003) · TIC

212 The accused confirmed the antecedents to be correct.

Restitution

213 No restitution had been made by the accused to reimburse Leow.

Prosecution's Submission on Sentence

214 The duration of the sentence sought by the Prosecution reflected the predominant sentencing considerations for cheating offences: general and specific deterrence. In this case, Prosecution submitted that general deterrence must necessarily constitute an important consideration in the sentencing of the accused who perpetrated offences against a vulnerable elderly victim: see *PP v Law Aik Meng* [2007] 2 SLR 814 at [24](b).

215 Hence, Prosecution urged the court to impose a global sentence of at least 60 months' imprisonment in order to sufficiently deter the accused and other like-minded individuals from committing such offences in the future in view of the following aggravating factors:

- (i) The accused engaged in offences after planning and pre-meditation over an extended period from January 2011 to October 2011 (10 months)

216 In this case, the twelve cheating offences were part of a prolonged period of conduct. Therefore, Prosecution argued that this was not a single moment of folly but a deliberate move each time by the accused to dishonestly induce the victim to make payments to her for the purported operations at numerous Singapore Pools outlets. The accused's systematic preparatory steps and planning due to greed caused her scam to progress forward towards the desired outcome.

- (ii) The accused abused trust arising from friendship with the elderly victim

217 Prosecution submitted that where an offence involves a breach of trust, this is generally treated as an aggravating factor. This includes instances where there is an abuse of trust arising from friendship. In *Cheong Siat Fong v PP* [2005] SGHC 176, the appellant was convicted of, *inter alia*, (a) theft of a blank cheque and (b) unauthorised use of a Singaporean identity card. These items belonged to someone whom the appellant was romantically involved with. In enhancing the appellant's sentence, the High Court held that "intimate human relationships, such as friendships are based, first and foremost, on trust. An abuse of one's position of trust and friendship should be taken seriously (see *Cheong Siat Fong* at [23]).

218 In this case, Prosecution argued that the victim clearly reposed trust in the accused as a friend. She let her into her home because the accused was her younger brother's long term partner. She cooked together with the accused on a frequent basis, and the accused taught her how to make Peranakan dishes. The victim generously extended loans to the accused of over

\$300,000 because the accused was her friend. In the course of the proceedings, the victim emphasised that she trusted the accused in that the latter would assist them with the procedure of obtaining Singapore Pools outlets. The accused herself admitted that she and the victim were "quite close".

(iii) The accused was motivated by financial gain and personally benefitted

219 Prosecution submitted that the courts have been keenly sensitive to recognise that motive affects the degree of an offender's culpability for sentencing purposes. Persons who act out of pure self-interest and greed will rarely be treated with much sympathy (see *Zhao Zhipeng v PP* [2008] 4SLR(R) 879 at [37]).

220 Here, the accused acted out of pure self-interest and greed, driven by the prospect of financial gain. She wanted easy and fast money, knowing that she was an undischarged bankrupt and unemployed. Pertinently, she admitted to having cheated the victim for the purpose of paying off debts, medical bills for her family and gambling in both the MacRitchie Reservoir Park recording as well as her conditioned statement to the police dated 13 February 2015.

(iv) The accused caused substantial loss to the victim and made no restitution

221 The accused's personal gain of \$646,000 was a corresponding loss to the elderly victim. Leow was further a vulnerable victim, being deprived of her hard earned savings by the accused, with no steps taken by the latter to effect any restitution.

222 On a review of the precedents, the Prosecution highlighted that this was on the higher spectrum of amounts cheated from a single victim. In the context of property offences, while the degree of harm caused by an accused's actions is not measured solely by the monetary sums involved, there has to be some correlation drawn between the quantum of the losses and the length of the sentence to be imposed (see *PP v Goh Bock Teck* [2002] SGDC 322 (**Tab 6**) at [23]). Accordingly, the higher the quantum involved, the heftier the sentence to be imposed.

(v) The accused is traced for cheating offences with similar *modus operandi*

223 The accused has previous similar antecedents of cheating. Her cheating antecedents were in 1981, 1983 and 2003. For the June 2003 antecedents, the Prosecution proceeded on two charges under s. 420 r/w s. 109 Penal Code.¹² In gist, the accused, then 61 years of age, had adopted a similar *modus operandi* for these cheating charges. She represented to the victims Daniel Seah Eng Toh ("Daniel"), Ang Soh Ping Sophia ("Sophia") and Lee Thiam Huat ("Lee") sometime in 2002 that:

(a) she had obtained four licences from Singapore Pools to operate 4D outlets, and that she would assign the rights to operate one of the said outlets to Daniel, Sophia and Lee if they paid her \$32,000, thereby dishonestly induced them to deliver \$32,000 to her (see DAC-11716-2003); and

(b) that her accomplice Fung Filan Corrina Shireene was the owner of a 4D outlet in Toa Payoh, when she was not, and that Daniel and Lee could obtain a 2/3 share of the said 4D outlet from Shireene for a sum of \$20,00, thereby dishonestly inducing Daniel, Lee and Sophia to deliver \$20,000 to her (see DAC-11717-2003).

224 The accused was sentenced to 15 months' imprisonment on each of the charges, for which both sentences were ordered to run consecutively. Notably, the accused was later sentenced in November 2003 for two further cheating charges, to an additional term of 10 months' imprisonment. This 10 months' imprisonment term was ordered to run consecutively to her 30 months' imprisonment sentence for the convictions in June 2003. Thus, the last term of imprisonment served by the accused was a significant 40 months' imprisonment.

225 Prosecution therefore submitted that the offences in this case were committed about five and a half years after the accused had completed serving this significant sentence. These similar antecedents revealed the accused's persistence in committing similar offences despite serving lengthy terms of imprisonment in the past for such conduct.

226 Accordingly, Prosecution argued that the principles of specific deterrence weighed heavily in sentencing the accused who had demonstrated her proclivity to engaging in such criminal conduct.

227 Next, the Prosecution submitted that the advanced age of an offender is not generally a factor that warrants a sentencing discount (see *PP v UI* [2008] 4 SLR(R) 500 at [78]). The court should be cautious not to send a wrong signal to elderly offenders that older criminals can expect to be dealt with more leniently for their crimes. The mitigating value of the accused's age must be balanced against the need to ensure that older offenders are still be punished appropriately, in line with the gravity of the offences committed (see *Ng Kean Meng Terence v PP* [2017] SGCA 37 (at [64(c)]).

228 At the same time, there was no evidence to show that incarceration would adversely affect the accused's health in this case. Other than a medical report to show that the accused is suffering from age related spinal conditions of lumbar spondylitis (spine condition that describes the natural deterioration of the lower spine due to age and compression) and listhesis (dislocation of one vertebra over the one beneath it producing pressure on the spinal nerve), the Defence did not produce anything else before the court to reveal that there would be a real likelihood of such disproportionate impact on the accused such as to warrant a significant reduction in the sentence to be imposed by the court. The Singapore Prison Service is also able to ensure that adequate care and treatment will be provided to the accused for her spinal conditions. Hence, the threshold for raising ill-health as a mitigating factor has not been met in this case (See: *Chew Soo Chun v PP* [2016] 2 SLR 78 at [36]).

229 Lastly, Prosecution submitted a table of sentencing precedents, which showed cases of offenders with previous clean records, had made minimal or no restitution and concerned charges of various individual as well as global amounts as follows:

S/N	Case Name	Charges	Brief Facts	Sentence Imposed
1.	<i>PP v Tan Gek Choo</i> [2006] SGDC 6 Untraced Convicted after trial	<u>Proceeded:</u> 3 x s. 420 Penal Code 1 x s. 420 r/w s511 Penal Code Total amount cheated: \$ 81,000	Offender befriended the victim and became the latter's 'shifu' or master and 'sister'. On three separate occasions, the offender deceived the victim into believing that she will inherit a sum of \$1 million from a demised monk and that she was required to pay large sums of money, being the processing fee to transfer the said inheritance sum to her and for other related expenses. The victim paid \$30,000, \$30,000 and \$21,000 on respectively on the three occasions. On the fourth occasion, the offender again deceived the victim into believing that one John in England was taking care of her factory in England that she has supposedly inherited, and that she was required to pay a sum of \$3,000 as 'angpow' money. She then attempted to dishonestly induce the victim to pay \$3,000. The District Judge took into account several aggravating features of the case. First, the offender cheated the victim out of her life savings. Second, there was the amount of money involved and the offender had not made any restitution. Third, there were four separate occasions of deliberate acts of serious dishonesty over a four year period.	2 x s. 420 (\$30,000 each): 15 months' imprisonment each 1 x s. 420 (\$21,000): 12 months' imprisonment (consecutive) 1 x s 420 r/w s 511 (\$3,000): 6 months' imprisonment (concurrent) Global sentence: 3 ½ years' imprisonment Offenders appeal against conviction and sentence lapsed

<p>2.</p>	<p><i>Gunasegeran s/o Pavadaisamy v PP</i> [1997] 3 SLR 969 Untraced Convicted after trial</p>	<p><u>Proceeded:</u> 1 x s. 420 Penal Code 1 x s. 471 Penal Code Total amount cheated: <u>\$60,568</u></p>	<p>Offender was convicted after trial of a charge under s 420 and a related charge under s 471. Offender sold a car to the victim, one Tomoyuki Suzuki, and deceived the victim into believing that he would transfer ownership of this car to the victim once payment of the purchase price was effected. Offender took advantage of the fact that the victim was an expatriate worker who did not realise that there was such a thing as a log book for the car which had to be handed over upon transfer of ownership. Victim paid the offender \$60,568 as the purchase price of the car and did not realise his error until a year later. Victim then contacted the offender for the return of the log book but offender failed to return the log book. Offender also forged the victim's signature on various documents which he submitted to a credit company in support of a purported application by the victim for a car loan. Offender later told the victim that he would settle the loan but he failed to do so; and the car was subsequently towed away by the credit company when the loan was not repaid. At trial, the offender sought to claim that it was the victim who had agreed to the transfer of ownership being delayed and to the loan being obtained in his name. The District Judge rejected his defence and convicted him. In sentencing, the District Judge considered that the offender had made partial payment of the hire purchase loans and the actual loss to the complainant was \$7,031.</p>	<p>Sentence imposed by the trial court: Six months' imprisonment on the s 420 charge and six months' imprisonment on the s 471 charge, both imprisonment terms to run concurrently; total of six months' imprisonment.</p> <p>Results of appeal: Offender's appeal dismissed. Sentence enhanced to twelve months' imprisonment on the s 420 charge, the six-month imprisonment term on the s 471 charge to remain.</p> <p>Both imprisonment terms to run concurrently; total of 12 months' imprisonment</p>
<p>3.</p>	<p><i>Goh Siew Buay v PP</i> MA 54/99/01 Untraced Convicted after trial</p>	<p><u>Proceeded:</u> 3 x s. 420 Penal Code (\$\$40,000, \$60,000 and \$100,000) Total amount cheated: <u>\$200,000</u></p>	<p>The offender cheated the victim on three occasions by deceiving the victim into believing that he was running a profitable business dealing with sales of jewellery which could give a profit return of between 15 to 25 per cent of the capital invested within ten days, and thereby dishonestly induced the victim to deliver \$100,000, \$60,000 and \$40,000 to him respectively. The offender in fact had no such business.</p>	<p>Sentence imposed by the trial court: 18 months', 12 months' and 10 months' imprisonment respectively. Sentences for first and third charges to run consecutively.</p> <p>Total: 28 months' imprisonment</p> <p>Results of appeal: Offender's appeal dismissed.</p>

4.	<p><i>PP v. Goh Hwee Lay</i></p> <p>DAC 500304/2013 & Ors</p> <p>Untraced</p> <p>Pleaded guilty</p>	<p><u>Proceeded:</u></p> <p><u>3 x s. 420 Penal Code (\$10,400, \$25,000 and \$21,000).</u></p> <p><u>Total amount cheated:</u></p> <p><u>\$86,150</u></p>	<p>The offender deceived victims into believing that she had an investment opportunity involving Apple products (iPads or iPhones) below retail price for which there was a potential buyer willing to purchase the products at a higher price. For two of the proceeded charges, the victims were her friends from Church (DAC 500304/2013 and DAC 500310/2013) ("affinity fraud").</p> <p>Restitution was minimal: \$2,886.50 out of \$56,400 in relation to the proceeded charges; \$12, 245.50 out of \$86,150 with regards to all eight charges.</p>	<p>For charge involving \$10,400: 8 months imprisonment</p> <p>For the two charges involving \$25,000 and \$21,000:</p> <p>12 months' imprisonment per charge</p> <p>Global sentence: 20 months' imprisonment (two sentences ordered to run consecutively)</p>
5.	<p><i>PP v Li Lianying</i></p> <p>DAC 903045/2013 & Ors</p> <p>FM(PG) on 30 May 2014</p> <p>Untraced</p> <p>Pleaded guilty</p>	<p><u>Proceeded:</u></p> <p>1 x s. 420 Penal Code (\$401,450)</p> <p>1 x 47(1)(b) p/u s. 47(6) CDSA</p> <p><u>TIC:</u></p> <p>1 x s. 420 Penal Code</p> <p>Total amount cheated:</p> <p><u>\$401,450</u></p>	<p>The offender belonged to a group of five foreigners who flew into Singapore to cheat elderly victims of their monies and jewelleries. The offender played an active role in the said same. The group of offenders concocted an elaborate plan where one of them would lie to an unsuspecting victim that her child was sick and needs a medium and once the victim was taken in by the said story, would orchestrate a scenario where the victim would be asked to bring all her monies and jewellery for special prayers. The said victims would bring their life savings in a bag for such prayers and when they closed their eyes for the prayers, their bag would be switched by the group. The group carried out the scam from 18 to 20 November 2014 and cheated 2 victims a total of \$439,000. Total of \$4,225.25 surrendered.</p>	<p><u>s. 420 (\$401,450): 3 years 10 months' imprisonment</u></p> <p>Total sentence: 4 years 10 months' imprisonment</p>
6.	<p><i>Neo Aileen</i></p> <p>[2013] SGDC 315</p> <p>Untraced</p> <p>Pleaded guilty</p>	<p><u>Proceeded</u></p> <p>2 x s.420 Penal Code involving USD500,000 per charge</p> <p>Amount cheated, at the prevailing exchange rate on 15 September 2013 was</p> <p><u>\$1,244,504.055</u></p> <p><u>in total</u></p>	<p>The offender had tricked her close friends, Hia Chye Kiang ("Hia") and his wife Koh Gek Hwang ("Koh") to hand her two cheques of USD500,000 each. These cheques belonged to the company where Koh was employed as an accounts clerk. The company engages in USD dominated copper trades and regularly converts USD to SGD for the purpose of these trades.</p> <p>Sometime in September 2011, the offender represented to Hia and Koh that she could obtain an attractive forex rate for USD to SGD conversions. The offender claimed that she could exchange USD500,000 for SGD650,000. Hia and Koh believed the offender on account of their friendship and mutual forays in commodity trading. Hia handed a cheque of USD500,000 to the offender, in exchange for her POSB cheque of SGD650,000.</p> <p>A few days later, the offender informed Hia that she could obtain an even better forex rate. This time, the offender claimed that she could exchange USD500,000 for SGD675,000. Hia handed a cheque of USD500,000 to the offender in exchange for her POSB cheque of SGD675,000. The POSB cheques bounced. The total sum of USD1 million was never recovered. No restitution was made.</p>	<p>39 months' imprisonment per charge (for both proceeded charges)</p> <p>Both charges to run consecutive, for a <u>global sentence of 78 months' imprisonment</u></p>

7.	<p><i>Gopalakrishnan Kannan Nambi</i></p> <p>DAC 44025/2012 & Ors</p> <p>Untraced</p> <p>Pleaded guilty</p>	<p><u>Proceeded</u></p> <p>4 x s.420 Penal Code involving \$103,000, \$80,000, \$70,000 and \$25,000</p> <p><u>TIC</u></p> <p>7 x s. 420 Penal Code</p> <p>1 x s 471 r/w s</p> <p>465 Penal Code</p> <p>Total amount cheated In proceeded cheating charges was \$278,000</p> <p>Global amount cheated was</p> <p><u>\$388,000</u></p>	<p>The offender lied to his victims that he was the owner of Singapore Sports Academy, and offered them an opportunity to invest in the business, which is doing printing projects with schools and/or companies. The 4 victims in the 4 proceeded cheating charges gave him the following amounts:- \$103,000/-, \$80,000/-, \$70,000/- & \$25,000/-.</p> <p>The offender, after receiving the money, channelled the money into his food business, as it was in desperate need of a cash outlay. The offender made partial restitution of \$200,000 which the Court acknowledged was not an insignificant amount, and was a reflection of the offender's efforts to pay back the victims.</p>	<p>For the charge involving \$103,000: 18 months' imprisonment</p> <p>For the charge involving \$80,000: 14 months' imprisonment</p> <p>For the charge involving \$70,000: 12 months' imprisonment</p> <p>For the charge involving \$25,000: 6 months' imprisonment</p> <p><u>Global Sentence: 30 months' imprisonment</u></p>
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230 Having regard to the sentencing precedents, the Prosecution submitted that the accused must be treated as more culpable given her offending conduct that involved numerous transactions as compared to the precedents, the high amount involved, the cheating of an elderly victim, and her history of cheating antecedents for which she has been sentenced to lengthy imprisonment terms. The Prosecution therefore urged the court to impose the following sentences on the accused:

S/N	Charge Number	Offence section	Time period	Outlet / Purpose of payment	Amount	Proposed sentence (at least)
1	DA920762/2015	s. 420 Penal Code	January 2011	Marina Bay Sands / Deposit	SGD65,300	18 months
2	DAC 920763/2015	s. 420 r/w s. 109, Penal Code	Between February and March 2011	Marina Bay Sands/ Renovation	SGD63,300	18 months
3	DAC 920764/2015	s. 420 Penal Code	January 2011	Bedok / Deposit	SGD65,300	18 months
4	DAC 920765/2015	s. 420 Penal Code	Between January and February 2011	Clementi / Deposit	SGD65,300	18 months
5	DAC 920766/2015	s. 420 r/w s. 109 Penal Code	Between January and September 2011	Bedok and Clementi / Security Bonds	SGD120,000	24 months
6	DAC 920767/2015	s. 420 Penal Code	Between March and July 2011	Chai Chee / Deposit	SGD65,300	18 months

7	DAC 920768/2015	s. 420 Penal Code	Between March and July 2011	Orchard / Deposit	SGD65,300	18 months
8	DAC 920769/2015	s. 420 Penal Code	Between March and October 2011	Orchard and Chai Chee / Admin fee	SGD4,000	6 months
9	DAC 920770/2015	s. 420 Penal Code	Between March and May 2011	Toa Payoh / Deposit	SGD65,300	18 months
10	DAC 920771/2015	s. 420 Penal Code	Between March and June 2011	Toa Payoh / Security Bond	SGD50,000	15 months
11	DAC 920772/2015	s. 420 Penal Code	Between March and July 2011	Toa Payoh / Renovation	SGD5,800	6 months
12	DAC 920773/2015	s. 420 Penal Code	August 2011	All 6 outlets / Singapore Pools machines	SGD12,000	8 months
Total loss: SGD646,900						
Proposed Global Sentence: At least 60 months' imprisonment						

Mitigation

231 The Accused is married and her husband is 88 years old. She resides with her husband in her daughters' home in Bishan.

232 As part of mitigation, Defence submitted the following broad points:

(i) Gap in the duration between the last and present offences

233 Defence submitted that whilst the accused had prior criminal antecedents for cheating under s420 of the PC, the Accused's last conviction was on 28 November 2003, almost 14 years ago. This significant gap of offending must be taken into account when considering the Accused's past criminal history. See: *PP v NF* [2006] 4 SLR(R) 849 at [70].

(ii) Accused's advanced age

234 Defence highlighted that the Accused is undoubtedly of an advanced age. Any substantial custodial term significantly deprives the Accused of a large fraction of her expectation of life. As such, the Accused should be afforded leniency on account of her advanced age and cited the Court of Appeal's decision of *Ng Kean Meng Terence v PP* [2017] SGCA 37 at [65(c)].

(iii) Poor health of both the accused and her elderly husband

235 Closely related to the accused's advanced age is the accused's age related health. The accused has produced medical records to show that she has lumbar spondylosis (deterioration of lower spine), listhesis (joint instability) and persistent sciatica (pain radiating from lower back to legs). The Accused also recently fell and injured her leg, making it difficult for her to walk. She attended Hougang Polyclinic on 28 August 2017 and was given follow-up appointments including a referral to the Singapore General Hospital's Orthopaedic Surgery Clinic.

236 Similarly, the accused's husband, Mr Fung Norbert ("Mr Fung") is in poor health. Her husband recently underwent eye surgery for a cataract and was diagnosed with dementia a few months ago. Medical records of the accused's husband were tendered. The accused said she is the sole caregiver of Mr Fung during the day as their children are out working. She is worried for the care arrangements for Mr Fung, who is now often forgetful and confused.

237 In respect of sentencing, Defence was of the view that a fair and appropriate global sentence for the accused's case would be one in the range of about 24 months' imprisonment. It did not submit on the individual sentence for each charge. Defence highlighted that the court's consideration should be on the totality of sentence and not the number of charges as the actual number of charges eventually brought is subject to circumstance and discretion. Also, many of the offences were committed in the same transaction and as part of the same criminal enterprise.

238 In support of its submissions, Defence cited the High Court case of *Tan Thiam Wee v PP* [2012] 4 SLR ("*Tan Thiam Wee*"). In *Tan Thiam Wee*, the accused pleaded guilty to 12 charges of cheating and agreed for 164 charges to be taken into consideration for sentencing. Each of the 12 charges involved sums ranging from \$36,380.00 to \$42,064.38; the total sum in the proceeded charges was \$473,433.70 and the total sum in all the charges was \$2,622,508.12. The accused had cheated this large sum of money creating false invoices and submitting them to OCBC Bank and thereafter created false delivery and purchase orders to support these invoices.

239 The learned Lee Seiu Kin J ("Lee J") hearing the Magistrate's Appeal, stated at [5] of *Tan Thiam Wee* that it was more appropriate to consider the total sum involved as \$634,075.52 as that was the net amount that OCBC Bank had been put at risk, considering the assets of the accused's company that OCBC Bank had recourse to, and it was the amount that OCBC Bank had actually lost. After reviewing a number of precedents, Lee J agreed that the sentence imposed was manifestly excessive and reduced the global sentence to that of 30 months' imprisonment (with 2 charges run consecutively).

240 Therefore, defence was of the view that *Tan Thiam Wee* was a directly relevant case. The number of proceeded charges in *Tan Thiam Wee* was 12, similar to the 12 charges the Accused faces. There were a large number of charges with the total sum involved on the charges being \$2,622,508.12 and the actual loss amounting to \$634,075.52 (similar to the total quantum the Accused has been convicted of; \$646,900).

241 On the other hand, Defence pointed out that there was a significant aggravating factor in *Tan Thiam Wee* as it involved the use of false invoices to induce financial institutions to provide credit undermined the confidence of the financial industry and adversely affects the economic infrastructure. The impact on the economic infrastructure thus brings a strong public interest element to deter cheating offences and/or fraud against financial institutions. This was absent in the present Accused's case.

242 The period of offending in *Tan Thiam Wee* was much longer at 13.5 months, whereas the Accused's period of offending was for a period of 8 months. For the aforesaid stated reasons, the Defence submitted that the Accused's eventual sentence should be less than the accused in *Tan Thiam Wee*.

243 Counsel for the Defence cited another precedent of *PP v Ng Lian Wah* [2005] SGDC 156 ("*Ng Lian Wah*"). The accused therein was charged with four charges of engaging in a conspiracy with two other persons to cheat the following sums: \$255,488.80, \$252,213.20, \$303,207.13 and \$100,586.00. The case involved the use of false invoices and delivery orders to support trade financing to banks. The accused claimed trial. He did not dispute the false documents used but disputed his knowledge of the scheme. He was eventually convicted after trial.

244 The accused in *Ng Lian Wah* was sentenced on conviction to the following:

- i. 9 months' imprisonment for the fourth charge which involved an amount in excess of \$100,000;
- ii. 12 months' imprisonment for the remaining charges which involved amounts in excess of \$200,000; and
- iii. Two of the sentences were run consecutively for a total of 21 months' imprisonment.

245 Similar to *Tan Thiam Wee*, Defence submitted that *Ng Lian Wah* involved the highly aggravating factor of deception and fraudulent financial instruments against financial institutions. This aggravating factor was not present in the accused's case.

246 In light of all the above, the Defence urged the court to accord due weight to the various sentencing factors set out above and assess the accused's culpability in the sentencing precedents aforementioned giving due regard to the differentiating factors highlighted. Defence also humbly urge the court to extend the leaf of compassion and mercy in passing an appropriate

sentence that would be fair and just in the circumstances.

Reasons for Sentence

247 In coming to my decision on the appropriate individual sentence to be imposed for each charge, I have considered the relevant aggravating and mitigating factors that bear upon each sentence. Generally, whilst one may be sympathetic, I did not find the personal and family circumstances of the accused to be of significant mitigating value in the circumstances.

248 At the outset, I must say that it gives me a heavy heart to sentence someone to a term of imprisonment at the age of 76 years old when she could be spending her twilight years more fruitfully with her family members. Unfortunately, the accused brought this upon herself having not learned from her past string of antecedents. The accused was traced to cheating offences all the way back since 1981, with the last one being sentenced in Nov 2003, when she was already 62 years old. A pertinent point to note is that in respect of the offences committed by her in 2002 for which she was sentenced in June 2003, the accused had adopted the same *modus operandi* to cheat her victims of their monies by offering them the hope of owning 4D betting outlets licenced from Singapore Pools.

249 Rather than to learn her lesson when she was already in her 60s, she instead became more emboldened and her plans were more elaborate. This was only about four to five years after she was last released from prison for her cheating offences, unlike the 14 years as suggested by the Defence. She not only cheated her victims of much larger sums of money, the offences were well thought out with a great degree of premeditation and executed over a longer period of time for almost a year.

250 Further, the victim was similarly an old lady who had probably invested her life savings in the venture proffered by the accused. As such, I agree with the prosecution that she cannot expect the court to be sympathetic towards her merely because of her old age and health related issues due to her age. Put it simply, one should not be expected to or think he would be let off more readily simply because of one's age if he has failed to learn from his past mistakes in life. Such sympathy should not be reserved for recalcitrant accused persons such as Lim.

251 Also, I am of the view that the individual sentences of each charge submitted by the prosecution, taking into account the amounts involved, are fair and reasonable and certainly within the usual benchmark imposed on similar type of cases as submitted by the parties. In the circumstances, the global sentence meted out must serve as a deterrent sentence to reflect the severity and magnitude of the offences committed by the accused in the present case.

252 However, the global sentence of 24 months' imprisonment sought by the defence in my view is manifestly inadequate in view of the lengthy string of antecedents of the accused. The sentence imposed should clearly not be lower but higher than the last sentence earlier received by the accused. As such, I agree with the Prosecution that the starting point here should not even be between the ranges of 30 to 36 months, which is typically intended for first time accused who pleads guilty to charges involving lower amounts.

253 Additionally, the accused was not only unremorseful, she decided to prolong the matter further by claiming trial and bringing the victim and her son through their ordeals all over again despite the supposedly close friendship between the parties. No restitution was also made.

254 In any case, having considered the circumstances as a whole and the mitigation made by the defence, I am nonetheless prepared to reduce the global sentence of 60 months' imprisonment sought by the prosecution somewhat. Accordingly, I sentence the accused to a global sentence of 57 months' imprisonment, having 3 of the 12 sentences imposed to run consecutive. All in all, given the quantum and number of charges involved, I do not believe that the sentence meted out was unduly unfair or manifestly excessive.

CONCLUSION

255 To summarise, as aforementioned, the accused was sentenced accordingly:

Charge No.	Sentence Ordered
1st Charge DAC-920762-2015	18 months' imprisonment
2nd Charge DAC-920763-2015	18 months' imprisonment
3 rd Charge DAC-920764-2015	18 months' imprisonment
4 th Charge DAC- 920765-2015	18 months' imprisonment
5th Charge DAC- 920766-2015	24 months' imprisonment
6 th Charge DAC- 920767-2015	18 months' imprisonment
7 th Charge DAC- 920768-2015	18 months' imprisonment
8 th Charge DAC- 920769-2015	4 months' imprisonment
9 th Charge DAC- 920770-2015	18 months' imprisonment
10th Charge DAC- 920771-2015	15 months' imprisonment
11 th Charge DAC- 920772-2015	6 months' imprisonment
12 th Charge DAC- 920773-2015	8 months' imprisonment
Total [2nd, 5th and 10th Charges highlighted in bold to run consecutively]	<u>57 months' imprisonment</u>

256 I further ordered for the sentence to commence on 11 October 2017. The sentence is stayed as the accused is on bail pending appeal.

257 Finally, this case also provides us with a cautionary note. In Singapore, being the licensee of a Singapore Pools outlet is akin to having the proverbial goose that lays the golden eggs where returns are most certainly guaranteed. One should never throw caution into the wind and let one's guard down in exchange for a quick return. Even for people who believe they have good business acumen, one should still exercise caution when deciding who they should trust.

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