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

[2023] SGHC 28

Magistrate's Appeal No 9057 of 2022

Between

Chai Chung Hoong

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law — Elements of crime — Mens rea]
[Criminal Procedure and Sentencing — Sentencing — Appeals]

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Introduction

1 The appellant claimed trial in the court below before a District Judge ("DJ") on four charges of failing to exercise reasonable diligence in the discharge of his duties as a director, in contravention of s 157(1) of the Companies Act (Cap 50, 2006 Rev Ed) (the "CA"), being offences punishable under s 157(3)(*b*) of the CA. The charges are reproduced in full in the DJ's grounds of decision which are reported as *Public Prosecutor v Chai Chung Hoong* [2022] SGDC 163 (the "GD").

2 The gravamen of the four charges is similar. They allege that the appellant failed to exercise any supervision over the affairs of four companies in which he was a director, resulting in these companies dealing with stolen properties as designated under s 410 of the Penal Code (Cap 224, 2008 Rev Ed)

("Penal Code") comprising various sums of moneys which were fraudulently obtained. The four companies in question were Naylor Trading Pte Ltd ("Naylor"), Stretton Pte Ltd ("Stretton"), Abassco Pte Ltd ("Abassco") and Rivoli Pte Ltd ("Rivoli") (collectively "the Companies"). The Companies were incorporated in Singapore, but the appellant, functioning as a nominee director, was the only director who was ordinarily resident in Singapore.

3 The DJ convicted the appellant and sentenced him to three weeks' imprisonment per charge, with two of the imprisonment terms running consecutively, resulting in a global sentence of six weeks' imprisonment. The appellant was also disqualified from acting as a director for five years, effective from the date of his conviction and to continue for five years after his release from prison pursuant to s 154(2)(*b*) read with s 154(4)(*b*) of the CA.

4 The appellant appealed against his conviction and sentence. Having heard the arguments on appeal, I dismiss the appeal and I set out my reasons below.

Background facts

5 Much of the background facts are uncontroversial or undisputed. The appellant is a chartered accountant in Singapore and Malaysia. He was the founder and managing director of 3E Accounting Pte Ltd ("3E") at all material times. Part of 3E's business involved providing corporate secretarial services and nominee director services (GD at [2]).

6 The Companies were incorporated in Singapore between June and July 2012 by Mun Wai Ho Kelvin ("Kelvin Mun"), who testified as a Prosecution witness. In 2012, he was working in Margin Wheeler Pte Ltd ("MW"). MW was an accounting and corporate secretarial firm that, like 3E,

also provided nominee director services. Kelvin Mun incorporated a total of six entities, including the Companies, allegedly on behalf of foreign clients of one "Iho Khal". To comply with the requirements of the CA, Kelvin Mun was appointed local resident nominee director of the Companies at the time of their incorporation (GD at [13(a)]–[13(b)]).

7 Thereafter, Kelvin Mun applied to several banks to open corporate bank accounts for the Companies. He submitted documents that he obtained from "Iho Khal" to the banks, including bank testimonials in respect of the foreign directors of the Companies. The Development Bank of Singapore Ltd ("DBS") approved the applications, but two other banks, namely, United Overseas Bank Ltd and Oversea-Chinese Banking Corporation rejected the applications (GD at [13(c)]–[13(d)]).

8 Kelvin Mun was subsequently informed by Credit Suisse AG ("Credit Suisse") that the name reflected on a purported Credit Suisse bank testimonial did not appear in their database. On receiving that information, he felt "there might really be something wrong with these customers"[1] and decided that he would cease providing services to the foreign clients of "Iho Khal" as he suspected that the Companies were involved in fraudulent activities (GD at [13(e)]).

9 Kelvin Mun then advised "Iho Khal" that the DBS corporate banking accounts of the Companies should be closed, and that "Iho Khal" would need to find another person to take over the local resident nominee director's position in the Companies if "Iho Khal" wished to maintain the said corporate banking

[1] Record of Appeal ("RA") at p 73, ln 30–31.

accounts. On 5 September 2012, Kelvin Mun also lodged a police report[2] in respect of the information he had obtained from Credit Suisse (GD at [13(f)]).

10 Subsequently, Kelvin Mun received an e-mail from Stephanie Chua of 3E, who informed him that 3E would be providing secretarial services and taking over the nominee directorship of the Companies. One "Florina" had apparently contacted the appellant via e-mail on 2 October 2012 and informed him that she required 3E's corporate secretarial and nominee director services for Rivoli. The appellant eventually agreed to provide these services to six companies through "Florina", including the Companies. The other two companies which do not concern the subject-matter of the charges are Targetti Trading Pte Ltd and Spectrum Int Pte Ltd (GD at [13(g)]–[13(h)]).

11 On 2 October 2012, the appellant accepted the appointments as nominee director of the Companies, although he only subsequently registered himself as the local resident director of the Companies on 24 October 2012.[3] After "Florina" gave the appellant Kelvin Mun's contact details, the appellant contacted Kelvin Mun to inform him that he would be taking over as the local resident director of the Companies. Kelvin Mun subsequently handed over the corporate secretarial files of the Companies to 3E (GD at [13(i)]–[13(j)]).

12 It was undisputed that the appellant remained a director of the Companies at all material times as specified in the charges. While he was a director, several police reports were lodged against the Companies beginning from December 2012 and investigations commenced thereafter. The appellant

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2 RA at p 1112.

3 RA at p 683, ln 19–32.

gave the first of several statements to the Commercial Affairs Department ("CAD") on 19 February 2013.

13 It was also undisputed that the Companies had dealt with "stolen properties" under s 410 of the Penal Code. Between 6 December 2012 and 6 February 2013, various victims had been defrauded into transferring moneys into the corporate bank accounts of the Companies. At the trial, the Prosecution called four witnesses to testify to this effect: Ong Chee An ("Ong"), Low Choon Foi ("Low"), Lau Seng Heng ("Lau") and Chung Ting Fai ("Chung"). Ong and Low testified as to how they were defrauded into remitting moneys into the corporate bank accounts of the Companies. Chung and Lau testified as to how their client and customer respectively were similarly defrauded. The evidence of five other witnesses as to their similar circumstances was adduced by way of conditioned statements (GD at [10]).

14 The appellant remained in his appointment as a nominee director until the Companies were struck off the register. Naylor was struck off first on 6 September 2013. The remaining three companies were struck off on 19 February 2014.[4]

The proceedings below

The respondent's case

15 Based on the evidence adduced at trial, the respondent's case was that the appellant did not exercise reasonable diligence in the discharge of his duties as a director of the Companies, as he had failed to exercise any supervision over

[4] RA at pp 1022–1033.

the Companies' affairs. This resulted in the Companies' bank accounts being used to receive criminal proceeds.[5]

16 Specifically, the appellant did not perform independent checks on the Companies' foreign directors, business operations, and banking documents, as admitted in his statements to the CAD. He acted instead as a mere "post-box" by arranging for bank documents and devices relating to the Companies (which included bank letters and statements, account PINs, cheque books and tokens) to be collected from Kelvin Mun's office, before posting the same to overseas addresses that were provided by "Florina". He also did not make any inquiries notwithstanding the presence of red flags.[6]

17 Further, the appellant's defence at trial that 3E had a "supervisory infrastructure" which he used to conduct checks on the Companies was an afterthought. Such a claim was uncorroborated and inconsistent with the appellant's statements to the CAD, where no mention of any such "supervisory infrastructure" was made.[7]

18 In addition, the appellant could not claim to have relied on checks done by Kelvin Mun/MW, or the banks. He did not know what checks had been done, nor did he know the outcome of the checks. Therefore, he had no basis to assume that the checks were adequate or would have met the requisite standard. The obligation to supervise the Companies' affairs remained personal to him as a director of the Companies.[8]

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5 Respondent's Submissions dated 1 November 2022 ("RS") at para 17.

6 RS at para 18.

7 RS at para 19.

8 RS at para 20.

19 The appellant's complete lack of supervision thus fell short of the standard of reasonable diligence expected of company directors in the discharge of their duties. He had experience and expertise as the managing director of 3E, a director in numerous companies, a member of the Association of Chartered Accountants since March 2010 and as a chartered accountant of both Singapore and Malaysia, and he had attended certified public accountant courses on money laundering and bankruptcy cases involving nominee directors. Accordingly, he should be held to a higher standard when determining whether he had exercised reasonable diligence in the discharge of his duties as a director of the Companies.[9]

20 Consequently, the appellant's failure to exercise any supervision over the Companies' affairs led to the Companies dealing with properties designated as "stolen properties" under s 410 of the Penal Code.

The appellant's case

21 The appellant contended that he had not failed to exercise supervision over the Companies' affairs. In particular, he pointed out that *before* assuming the nominee director appointments, he had agreed to take on the roles subject to the clients signing a Nominee Services Indemnity Agreement ("NSIA"), a Corporate Secretarial Services Agreement ("CSSA"), and an Address Agreement ("AA").[10] He had also implemented a "supervisory infrastructure" requiring them to utilise 3E's corporate secretarial and registered address services in addition to the nominee director service.[11]

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9 RS at para 21.

10 Defence's Closing Submissions dated 20 August 2021 ("DCS") at para 74 (RA at pp 8268–8269).

11 DCS at para 76 (RA at p 8269).

22 The appellant relied principally on the decision of the High Court in *Abdul Ghani bin Tahir v Public Prosecutor* [2017] 4 SLR 1153 ("*Abdul Ghani*") for the alleged proposition that a director should only be found to have failed to exercise any supervision if he had failed to make proper inquiries where there were obvious red flags or circumstances that compelled such inquiries based on his knowledge of suspicious facts. In this regard, it was submitted that there were no red flags which would have put the appellant on alert.[12]

23 It was further contended that the appellant had exercised supervision *upon* taking over as a nominee director of the Companies. In this connection, it was contended that his reliance on MW's and a first-tier local bank's due diligence was an act of supervision.[13]

24 The appellant also argued that he had exercised supervision over the Companies' affairs *after* being contacted the first time by the CAD during the course of their investigations. To this end, he observed that he had actively co-operated with the authorities by, *inter alia*, procuring information and documents regarding the Companies and ensuring that the Companies remained compliant with the Inland Revenue Authority of Singapore's ("IRAS") and the Accounting and Corporate Regulatory Authority's ("ACRA") policies and guidelines.[14]

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12 DCS at paras 19–22 and 60–67 (RA at pp 8251–8252 and 8263–8266).

13 DCS at paras 91–100 (RA at pp 8274–8278).

14 DCS at paras 122–136 (RA at pp 8286–8290).

25 Lastly, it was submitted that the respondent's case failed on causation as they had not demonstrated that the appellant's failure to exercise any supervision resulted in the Companies dealing with stolen properties.[15]

The DJ's decision

26 The DJ adopted the appellant's submission that the term "supervision" should be given its plain and ordinary meaning, which broadly involves a degree of monitoring or managing of activities and/or individuals. However, she ultimately accepted the respondent's arguments and found that on the evidence, the appellant had not exercised any supervision over the Companies' affairs (GD at [15]). The appellant's CAD statements revealed a degree of laxity with which he viewed his role as a nominee director of the Companies. These statements contained admissions that he would not do thorough background checks on the foreign directors and would not check the business activities of the Companies (GD at [16]–[25]).

27 The DJ found that the appellant's testimony in court further demonstrated the casual manner in which he approached his role as a nominee director of the Companies. He did not take steps to verify "Florina's" identity, the extent of her authority or her role in the Companies. He simply took all his instructions from "Florina" without any question. He did not check the purpose of the bank accounts of the Companies, and also did not obtain any documents which showed that the Companies were running actual businesses (GD at [26]–[27]).

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15 DCS at paras 137–148 (RA at pp 8290–8294).

28 Turning to the appellant's defences, the DJ noted that the appellant's claim that he had in place a "supervisory infrastructure" was only mentioned for the first time at trial. There was no prior mention of any of the steps he had purportedly taken as due diligence. In his CAD statements, he in fact stated that he had "not done any checks at all". There was also no documentation of any of the steps comprising the appellant's purported "supervisory infrastructure". The DJ therefore concluded that the appellant's claim was an afterthought. The DJ held that the steps the appellant took to get the foreign directors to sign various agreements, including a NSIA and imposing a requirement that 3E's corporate secretarial and registered address services had to be used, did not amount to acts of supervision. They only served to facilitate the appellant's role as a nominee director and indemnify him against any liability or loss. They did not absolve him from his duties as a director to supervise the Companies (GD at [29]–[33]).

29 Next, the DJ rejected the appellant's defence that he had reasonably relied on the due diligence checks conducted by Kelvin Mun/MW and DBS. She held that even as a nominee director, the appellant was expected to fulfil basic duties as a director, to take personal responsibility in respect of the Companies' affairs and conduct his own independent checks. He had a "separate and continuing obligation to exercise due diligence", and the checks done by third parties did not excuse him from having to personally check and supervise the Companies' affairs. The DJ further noted that the appellant was unaware of the actual checks conducted by the third parties, and had merely assumed that the results of any checks done by these third parties would have sufficed to meet the requisite standard (GD at [34]–[38]).

30 On the evidence, the DJ also found that there was "overall inaction" on the appellant's part after he became a nominee director of the Companies. He did not follow up with effecting changes of the Companies' mailing addresses with the bank, never opened any bank letters in relation to the Companies, and merely acted

as a "post-box" by collecting bank documents from Kelvin Mun and forwarding them overseas to various addresses provided by "Florina" (GD at [39]–[40]). The DJ also held that actions taken by the appellant after the CAD investigations began did not amount to supervision, and were only intended to assist and facilitate the investigations (GD at [41]–[43]).

31 The DJ held, with reference to *Abdul Ghani*, that the appellant was expected to exercise the same degree of care and diligence as a reasonable director found in his position. The standard is an objective one, and the law does not make a distinction between nominee and executive directors. Thus, the appellant could not hide behind the label of "nominee director" to justify a complete lack of supervision. The DJ further held that the absence of guidelines for nominee directors at the material time did not mean that standards of reasonable diligence expected of a nominee director did not exist. Moreover, the DJ disagreed with the appellant that *Abdul Ghani* stood for the proposition that there had to be "red flags" before the duties of a director are triggered under the CA (GD at [46]–[54]).

32 The DJ concluded that the appellant had not met the expected standard of reasonable diligence. She found that the appellant had failed to discharge the basic duties of a director, as he failed to conduct background checks into the Companies' foreign directors, their business operations and activities, and placed himself in a position where he had no control over the Companies' banking activities by forwarding the bank PINs, tokens and cheque books to unknown persons overseas. Indeed, given the skill and experience possessed by the appellant, more was expected of him in his role as a nominee director of the Companies (GD at [55]–[58]). In concluding as she did, the DJ also rejected the opinion of Defence witness, Dr Ramasamy Subramaniam Iyer, on what might amount to reasonable diligence and whether the appellant had breached the

standard of reasonable diligence on the facts as these were instead key legal issues solely within the court's remit (GD at [59]–[65]).

33 In respect of causation, the DJ was satisfied that the appellant's conduct had resulted in the Companies dealing with the stolen properties. The DJ drew guidance from *Abdul Ghani*, and held that any degree of causation was sufficient to make out the charges; the Prosecution need not prove that the appellant's conduct "wholly" or "mainly" caused the Companies to deal with the stolen properties. She found that if the appellant had taken basic steps to exercise the requisite supervision over the Companies' affairs, it was possible that the Companies might not have received the stolen properties (GD at [67]–[70]).

34 Accordingly, at the conclusion of the trial, the DJ found the appellant guilty and convicted him on all four charges.

35 In determining the appropriate sentence, the DJ was again guided by *Abdul Ghani* where the High Court held that custodial sentences should be imposed where a director breaches his duty intentionally, knowingly or recklessly. The DJ found that the appellant was reckless and his culpability arose from his inaction despite knowledge and awareness of the risks involved in the circumstances (GD at [74], [76] and [81]). Nevertheless, she opined that his culpability was lower than that of the offender in *Abdul Ghani*. She also considered the mitigating factors raised on his behalf including the fact that he was a first-time offender (GD at [86]–[87]).

36 The DJ imposed a sentence of three weeks' imprisonment per charge and ordered two sentences to run consecutively for a global sentence of six weeks' imprisonment. She also disqualified the appellant from acting as a

director for a period of five years pursuant to s 154(2)(*b*) read with s 154(4)(*b*) of the CA.

Issues to be determined on appeal

37 As set out in the GD, the DJ largely adopted the respondent's submissions in convicting the appellant. On appeal, both the appellant and respondent repeat their core submissions from the proceedings below.

38 The appellant's arguments on appeal focus on the DJ's rejection of his claims that he had exercised supervision over the Companies' affairs. He contends that the DJ erred in not taking into account all of his actions involving the Companies' affairs, which comprised the "supervisory infrastructure" he had in place. This encompassed assessing the risks involved in assuming the nominee directorships while having regard to: (a) the nature of the Companies' business operations; (b) the (purported) nationalities of the foreign directors; (c) entering into agreements requiring the foreign directors' compliance, *inter alia*, to legal disclosure obligations; and (d) taking positive actions to assist and co-operate after the CAD investigations had commenced. He further submits that the DJ erred in selectively relying on parts of his CAD statements, and consequently in finding that he had breached the standard of reasonable diligence expected of him as a director, resulting in the Companies dealing with stolen properties. Lastly, he contends that his actions and alleged omissions could not have resulted in the Companies dealing with the stolen properties.

39 Based on the foregoing, the appeal centres on three main issues, all of which turn on the facts:

(a) The first and primary issue is whether the various actions that the appellant allegedly undertook amounted to an exercise of supervision over the Companies' affairs.

(b) The second issue relates to whether the appellant met the standard of reasonable diligence expected of a company director in respect of the Companies.

(c) The third issue pertains to the question of causation, namely, whether the appellant's actions resulted in the Companies dealing with stolen properties.

My decision

Preliminary issues: Whether the DJ assessed the adequacy of supervision and whether the charges were defective

40 I begin by addressing the appellant's two preliminary arguments. First, the appellant submits that the DJ erred in applying a test of "adequacy of supervision rather than determining evidentially whether there were acts of supervision by the [a]ppellant during the stipulated periods framed in the charges".[16] In this regard, the appellant argues that the DJ's approach was incorrect since the charges as framed alleged that he had failed to exercise *any* supervision over the affairs of the Companies, and not that his acts of supervision were inadequate.

41 With respect, I am not persuaded that this argument has merit, as it appears to misconstrue the DJ's reasoning in her GD. The DJ carefully considered the various actions that the appellant had sought to rely upon as acts

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16 Appellant's Submissions dated 1 November 2022 ("AS") at para 4.

of supervision in support of his defence. The DJ clearly found that irrespective of the intent or efficacy of these actions, the appellant had failed to exercise *any* supervision over the affairs of the Companies. In her assessment, *none* of the appellant's actions amounted to supervision (see, *eg*, GD at [15], [33], [38], [40], [42] and [43]). On this basis, the DJ eventually concluded that the charges were made out. I shall examine below whether these findings were justifiable on the available evidence. In any event, based on the GD, it is beyond peradventure that the DJ rightly assessed whether the appellant had exercised *any* supervision over the Companies' affairs as opposed to assessing the adequacy of any such supervision.

42 The appellant's second preliminary argument is premised on the fact that the dates set out in the four charges refer to the entire period(s) when he was a director of the four Companies. However, these dates did not correspond with the more limited time frames within which the respondent adduced evidence to show that he had failed to exercise supervision over the affairs of the company.[17] As such, the charges were defective and misleading.

43 Once again, I do not see any merit in this argument. It is clear that the charges against the appellant were for failing to exercise reasonable diligence in the discharge of his duties *as a director* by failing to exercise any supervision over the affairs of the Companies which resulted in the said companies dealing with properties designated as "stolen properties". The specific duration of the offending conduct in relation to each company was thus tied to the periods from when the appellant first became a director of each company up until the point when the company in question dealt with "stolen properties".

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17 AS at para 10.

44 The charges were thus reasonably sufficient to give the appellant notice of what he was charged with, pursuant to s 124(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC"). They were not erroneous or misleading in terms of stating the entirety of the duration when the appellant was a director of each of the Companies. Even if there was an error in the particulars stated in the charges, pursuant to s 127 of the CPC, "[n]o error in stating either the offence or the particulars that must be stated in the charge, and no omission to state the offence or those details shall be regarded at any stage of the case as material unless the accused was in fact misled by that error or omission". Based on the appellant's conduct of his defence, it was clear that he was not misled in any way and was not prejudiced in his ability to meet the gravamen of the charges.

Issue 1: Whether the appellant's actions amounted to supervision over the Companies' affairs

45 Section 157(1) of the CA provides that a director "shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office". As stated above, the nub of each of the charges against the appellant was that he had failed to exercise reasonable diligence in the discharge of his duties as a director by failing to exercise any supervision over the Companies' affairs.

46 In evaluating whether the appellant's actions amounted to supervision, the starting point is to differentiate between what he had done over three distinct phases:

(a) prior to (and including) 2 October 2012, before he assumed the nominee director appointments in the Companies ("Phase 1");

(b) after 2 October 2012 to the time of commencement of the CAD investigations involving the appellant (by which time fund

transfers had already taken place since 6 December 2012) ("Phase 2"); and

(c) after the fund transfers up to when the appellant struck off the Companies ("Phase 3").

47 As far as the charges are concerned, the primary focus is on the appellant's conduct *after* 2 October 2012 in Phase 2 when he was first appointed as a nominee director of the Companies, up to around the two-month period when "stolen properties" were dealt with by the Companies, *viz*, 6 December 2012 (Abassco) to 6 February 2013 (Stretton). By 6 December 2012, the appellant would already have assumed his role as a director for just over two months. He would only have been expected to fulfil his duties of supervising the Companies after having assumed the nominee directorships. The appellant has however not drawn any apparent distinction between the different phases and has instead made general reference to all his actions which, on his account, would demonstrate supervision throughout all three phases. This included what he had done well after the stolen properties had been dealt with by the Companies, even up to when the Companies were struck off. I shall explain in due course why this is inappropriate in the context of the charges at hand.

48 I turn now to address the key arguments mounted by the appellant to demonstrate that he had exercised supervision over the Companies' affairs.

The "supervisory infrastructure" argument and due diligence

49 A pivotal plank of the appellant's appeal centres on his argument that he had set up a "supervisory infrastructure", a key part of which was meant to assess the risks of the Companies being involved in illegal activities and dealing

with stolen properties.[18] While the phrase "supervisory infrastructure" does not actually appear in any of the appellant's CAD statements, he submits that this was instead referred to in his CAD statement dated 10 December 2014 as a "system",[19] as set out in the question and answer below:

> Question 123: Do you feel that you are able to fulfill [*sic*] your duties as a director of those 250 companies simultaneously?
>
> Answer: Yes, because we have a system in place from the due diligence to the team of staff supporting the companies.

50 The appellant submits that this "system" or "supervisory infrastructure" was used to decide the extent of customer due diligence ("CDD") he would undertake ranging from simplified to enhanced, in accordance with the Monetary Authority of Singapore 626 Notice issued to banks on 2 July 2007 dealing with "Prevention of Money Laundering and Countering the Financing of Terrorism – Banks" ("MAS 626 Notice").[20] I address the appellant's reliance on the relevant paragraph of the MAS 626 Notice below at [96]–[99].

51 I note that no clear distinction was articulated by the appellant between what constituted CDD for risk assessment under the alleged "supervisory infrastructure" the appellant had set up, and what came under the discrete rubric of *supervision* over the Companies' affairs. No details or elaboration were given in his CAD statements as to precisely what the "system in place" for CDD comprised either. He appeared to take the position that any CDD measures would go towards demonstrating his "supervision" over the Companies' affairs.

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18 AS at para 12.

19 AS at para 13, referring to RA at p 2616.

20 AS at para 12, referring to RA at p 5282.

52 To my mind, the appellant's evidence and the submissions before me conflated the inquiries pertaining to: (a) adequacy of CDD for risk assessment; and (b) supervision as a director. As alluded to above at [47], this was inappropriate. These are discrete streams of activity. Risk assessment was supposed to be done as a form of CDD *before* he assumed the nominee directorships on 2 October 2012. It is telling that he agreed to take on the appointments with very little hesitation, on the same day that "Florina" made inquiries with him through a cold call via e-mail. In his CAD statement recorded on 19 February 2013, he admitted that he had done so without having reviewed any documents pertaining to these Companies.[21]

53 Evidently, the only CDD that the appellant carried out before assuming the nominee directorships was through performing desktop searches on the ACRA and IRAS online portals. However, as I shall explain in more detail below, it is apparent that he performed these searches only on Rivoli before agreeing to the appointments. Further, it would appear that he only performed bankruptcy searches on all the Companies after 2 October 2012, as indicated in his internal e-mail to his wife, who was also the appellant's secretary, dated 12 October 2012.[22] Finally, it was only after 2 October 2012 that he ascertained that the Companies successfully opened corporate bank accounts with DBS, following inquiries with Kelvin Mun. He then purportedly relied on the checks done by Kelvin Mun/MW and DBS.

54 Taking the appellant's case at its highest, I pause to note that even if all these acts done by him purportedly in connection with risk assessment as part of CDD had been scrupulously and properly carried out, those acts that took

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21 RA at p 1399, Exhibit P31, Answer to Question 33.

22 AS at para 132; RA at p 2825.

place in Phase 1, prior to 2 October 2012, are of little consequence. As noted above at [47], the pertinent time frame as far as the present charges are concerned is Phase 2. The focal point of the charges was whether the appellant had exercised any *supervision in his capacity as a director* from the time of his appointment on 2 October 2012.

55 Further, as noted above at [11], the appellant registered his appointments as a nominee director of the Companies with ACRA on 24 October 2012, but had backdated the appointments to 2 October 2012. Thus, it would appear that some of the CDD measures mentioned above were conducted by the appellant in Phase 2 prior to his formal registration as a nominee director of the Companies. However, as stated above at [52], the appellant appears to have conflated the inquiries pertaining to the adequacy of CDD for risk assessment and supervision as a director. Only the latter inquiry is relevant to the present set of charges. Hence, the appellant's actions in so far as they pertained to activities centring on CDD whether in Phase 1 or Phase 2 (or both) are of no import or relevance to his defence. Even if the appellant had sufficient grounds to find that the Companies were "low risk" after performing extensive CDD over the course of both Phases 1 and 2, this did not absolve him of his basic duties as stipulated by s 157(1) of the CA to "use reasonable diligence in the discharge of his duties of his … office as a director". The fundamental inquiry must relate to what he had done by way of *supervision* in Phase 2, when he assumed the role and responsibility of a nominee director of the Companies.

56 Bearing the above observations in mind, I shall proceed to examine the arguments canvassed in respect of the alleged "supervisory infrastructure" and whether the appellant's actions, irrespective of which phase they took place in, amounted to evidence of any *supervision* over the Companies' affairs.

Execution of various agreements with 3E

57 The appellant argues that among other Phase 1 measures, he exercised supervision over the Companies by having the foreign directors execute a NSIA, a CSSA, and an AA with 3E.[23]

58 The DJ characterised these agreements as steps that 3E took to facilitate the appellant's role as a nominee director and to indemnify themselves and/or the appellant against any liability or loss resulting from any illegal activities that the Companies might engage in (GD at [32]). Plainly, as the title of the NSIA itself specified, it *literally was* an indemnity agreement. In my view, the DJ was wholly justified in finding that none of these measures could be said to constitute acts of supervision. Any such purported acts of supervision or monitoring that the appellant had performed would more aptly be described as self-serving acts of self-preservation or "insurance".

59 Furthermore, even adopting the appellant's definition of "supervision" as set out at [26] above, I am unable to see how the mere act of asking the foreign directors (assuming that they did actually exist and/or were genuinely who they claimed to be) to sign the NSIA or the other agreements could in any way amount to supervision or monitoring. One of the purposes of the NSIA[24] was to require the Companies and/or their directors (as "authorised persons") to refrain from committing any illegal activities in consideration for the provision of nominee director services. It also enabled 3E to terminate the NSIA should the Companies or their directors commit any breach of their obligation not to engage in any illegal activities. This was certainly not a form of supervision or

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23 AS at paras 15–45.

24 RA at pp 2684–2693 (Abassco), 2697–2706 (Naylor), 2710–2719 (Stretton) and 2723–2732 (Rivoli).

monitoring. No active steps to that effect were being taken by the appellant or 3E to ensure compliance.

60 The NSIA stipulated a contractual obligation on the Companies and their directors, but that obligation was never observed or enforced. The corresponding "sanction" for breach counted for nothing, given that the Companies were in breach barely two months after the appellant assumed the nominee directorships. Meanwhile, the appellant was obviously none the wiser until long after the illegal activities had taken place.

61 In relation to the AA,[25] while it was meant to ensure that the Companies used 3E's registered business address as their registered mailing address, this arrangement was never implemented as the foreign directors took no steps to effect the requisite change of the Companies' mailing addresses. The appellant never did receive the Companies' letters at 3E's business address as they continued to be sent to MW. Contrary to the appellant's submissions, I am unable to see how mere requests for the mailing addresses to be changed would amount to an act of "managing the Companies" falling within the ordinary meaning of supervision.[26]

62 The appellant further maintains that the AA gave him the contractual right to open any of the Companies' letters and that 3E's staff would "review the letters to identify the letters that needed to be opened".[27] These arguments are quite meaningless in the present context. First, the appellant conceded that he never opened or saw any of the bank letters which he had collected from

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25 RA at pp 2696 (Abassco), 2709 (Naylor), 2722 (Stretton) and 2735 (Rivoli).

26 AS at para 28.

27 AS at paras 22–24.

Kelvin Mun and forwarded overseas (GD at [39(b)]–[39(c)]).[28] Second, as the letters in question were never opened, their contents remained completely opaque and inscrutable. As such, the foreign directors' signing of the AA could not, by itself, amount to an act of supervision.

63 In relation to the CSSA,[29] I agree with the DJ's view that signing of the CSSA was merely to facilitate the appellant's role as a nominee director. The CSSA was meant to ensure that any board resolutions would be sent to him so that he would be notified of any major transactions and have additional information about the Companies. Once again, like the NSIA, this was no more than a contractual obligation that the Companies should have observed.

64 There is no evidence that the CSSA was either honoured or breached by the Companies. Indeed, the appellant himself explained that the CSSA was entered into so that he could ensure that 3E would facilitate the Companies' compliance with ACRA filing requirements.[30] On his own account, this was purely to facilitate the performance of his role as a nominee director. There was thus no element of supervision in the CSSA as well.

65 The appellant argues that ultimately, the mere act of procuring these agreements must be considered an act of supervision.[31] For the reasons set out above, I am unable to see any merit in this argument. The fact that the agreements were procured would only go as far as to operate as a precursor to active supervision. On the evidence, the agreements alone served no purpose

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28 RA at p 1509, Exhibit P34, Answer to Question 37; RA at p 763, ln 30 to p 764, ln 6.

29 RA at pp 2694–2695 (Abassco), 2707–2708 (Naylor), 2720–2721 (Stretton) and 2733–2734 (Rivoli).

30 NE, 14 April 2021, p 10 (RA at p 582, ln 9–16).

31 AS at para 20.

beyond that. Put another way, it was still a step removed from any actual supervision or monitoring. The appellant was unable to show how the agreements were of any actual assistance to him in supervising and monitoring the Companies' affairs.

66 I note further that the appellant's e-mail of 2 October 2012 to "Florina" bearing the timestamp of 23:53:17(+0800) ("the Confirmation E-mail") conveyed his agreement to be appointed as a nominee director of the Companies. In the Confirmation E-mail, he attached the relevant agreements pertaining to Rivoli for follow-up action by "Florina". At that juncture, the appellant only knew that Rivoli was one of the Companies which "Florina" was seeking a nominee director for. He did not as yet have the names of the other five companies and therefore could not possibly have prepared all the relevant agreements to convey to "Florina".

67 "Florina" responded to the Confirmation E-mail on 3 October 2012 with the names of the other five companies.[32] As directed by the appellant in the Confirmation E-mail, "Florina" was supposed to procure all the foreign directors' signatures on the agreements and "scan [them] back" to the appellant. She did not follow up until the week after on 8 October 2012 at 5.07pm.[33] She apologised for the delay, claiming that she was unable to respond "untill [*sic*] [she] made all directors of all companies to [*sic*] sign the letters".

68 It is thus patently obvious from the contemporaneous objective evidence that the agreements were in fact only signed and executed *after* 2 October 2012. This is amply corroborated by the appellant's own description in the Index to

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32 RA at p 2823.

33 RA at p 1466, Exhibit P32.

the Defence's Bundle of Documents tendered in the court below, where the same series of e-mails found in Exhibit P32 are described as "[E]mails showing Florina emailing the signed [agreements] on 09/10/12".[34] Indeed, the last e-mail in the chain[35] suggests that "Florina" only sent the appellant the first of the signed agreements on 9 October 2012.

69 From my perusal of the agreements, the purported signatures of the foreign directors were apparently all undated and were not actually witnessed by anyone.[36] The appellant did not even ensure that the agreements were properly executed. *Prima facie*, they were unenforceable. This further reinforces my view that the agreements were of no assistance to the appellant.

70 Finally, I should add that in his examination-in-chief, the appellant claimed that he had prepared all the agreements for the Companies to execute before accepting the appointments as a nominee director on 2 October 2012.[37] This was very different from saying that he had ensured that all the agreements were executed before he accepted the appointments. From the analysis I have set out above at [66], his claim was patently false; he only knew the name of one of the Companies (Rivoli) on 2 October 2012. Counsel posed an apparent leading question subsequently to the appellant as follows: "can you tell this Court why these … agreements were executed by the company before you took on the appointment … of a nominee services director?" [38] While this may ostensibly have been the Defence's case theory, it is not supported by the

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34 RA at p 2558.

35 RA at p 1466, Exhibit P32.

36 RA at pp 2684–2735.

37 NE, 14 April 2021 at p 9 (RA at p 581, ln 24).

38 NE, 14 April 2021 at p 10 (RA at p 582 ln 30–32).

objective evidence. The appellant himself had not given any clear evidence to this effect.

Checks on the Companies and foreign directors

71 The appellant's evidence was that the only checks he had caused to be made in Phase 1 were two online searches on the Companies. The first was on the ACRA BizFile portal and the second was on the IRAS portal.[39] After receiving "Florina's" e-mail inquiry of 2 October 2012, he claimed that he did an immediate online ACRA search on Rivoli to ascertain the foreign director's citizenship and residence and the nature of Rivoli's business. He was satisfied that it was a "low-risk" engagement. As such, he immediately agreed to undertake the nominee director appointments on the same day.[40]

72 According to the appellant, he had prepared the various agreements for "Florina" to obtain the foreign directors' signatures before he assumed the nominee directorships of the Companies. I have set out my observations above at [66]–[70] in this regard and found that his claim was not credible. By the same reasoning, the appellant could not possibly have conducted online searches on all the Companies apart from Rivoli before accepting the nominee director appointments on 2 October 2012. As such, all he did was to run the ACRA and IRAS searches on Rivoli before agreeing to be appointed by "Florina". He also admitted that he did not have sight of any of the Companies' corporate secretarial records prior to commencing his directorship appointments.[41] Both the ACRA and IRAS searches on the Companies, if and

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39 AS at para 46; NE, 14 April 2021 at p 16 (RA at p 588, ln 21–32).

40 NE, 14 April 2021 at pp 5–7 (RA at p 577, ln 10 to p 579, ln 3).

41 NE, 14 April 2021 at p 7 (RA at p 579, ln 8–11).

when they were undertaken, were not acts of supervision but a very rudimentary form of CDD at best.

73 In particular, the IRAS search was to ascertain that the Companies did not have any outstanding tax submissions with IRAS.[42] The appellant submits that this was an act of supervision "because it then had a bearing on the amount of checks that needed to be performed by [him], under the 2014 Enhanced ACRA Regime".[43] I do not see the relevance, however, of this reference to the 2014 ACRA Regime when the relevant activities took place in 2012 and 2013.

74 As far as the IRAS search was concerned, it would appear that 3E was merely going through the motions with an entirely perfunctory and pointless exercise. The appellant knew that the Companies were "quite newly set up".[44] When he received "Florina's" inquiry in her e-mail of 2 October 2012, he was expressly told that the Companies had only recently been incorporated in Singapore. The Companies had obviously not commenced business operations yet since they did not have a local resident director and were looking to him to undertake that role in place of Kelvin Mun. Either way, the outcome of both the ACRA and IRAS searches was not a licence for the appellant not to exercise supervision.

75 What is most telling is that apart from these desktop searches, the appellant did not perform any other independent checks on the Companies. It was undisputed that the appellant had not conducted any thorough background

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42 RA at p 588, ln 28–32.

43 AS at para 46.

44 NE, 14 April 2021 at p 16 (RA at p 588, ln 32).

checks on the foreign directors.[45] Indeed, the appellant claimed that it would be "very costly" to perform such checks. He did not bother to conduct a simple Internet search on the directors' purported registered addresses which were obtained from the ACRA searches, which would minimally afford some sense of whether these might be genuine or fictitious addresses. His workaround was to rely heavily on prior assumed due diligence conducted by DBS, along with his purported reliance on Kelvin Mun's assurances. I shall address this aspect of the appellant's conduct in due course at [78]–[81] below.

76 The appellant was also unaware of the roles and job scopes of the foreign directors and did not check on this or ask any questions.[46] He also did not conduct checks on the Companies' business activities.[47] When the appellant took over as nominee director for the Companies, he only knew of their principal activities from his ACRA searches.[48] He did not think to ask why these Companies, each of which had only one common shareholder and foreign director and a paid-up share capital of only US$1, purportedly dealing in construction materials or trading of canned food, car engines or car parts, would have wanted to conduct business activities in Singapore. In addition, he had no control over the Companies' banking activities. As already highlighted above at [62], he did not have sight of any of the Companies' bank statements and served as a mere functionary by being a "post-box" acting on "Florina's" instructions without question.

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45 RA at p 1400, Exhibit P31, Answer to Question 40.

46 RA at p 1401, Exhibit P31, Answer to Question 47.

47 RA at p 1396, Exhibit P31, Answer to Question 23.

48 RA at p 1399, Exhibit P31, Answer to Question 31.

77 Further, the appellant's possession of the Companies' common seals cannot be said to be a form of supervision, contrary to his submissions.[49] The fact that he had obtained the Companies' common seals from MW was neither here nor there. As it transpired, this was not a safeguard in any sense, and it did not (and could not) preclude any illegal activities from being conducted.

Reliance on checks by MW and DBS

78 The appellant submits that it was reasonable for him to rely on the checks done by MW on the Companies.[50] In his written submissions, counsel argued that the appellant was aware of the checks on the Companies conducted by MW based on his review of MW's website.[51] With respect, this submission glosses over the proper context of the appellant's oral testimony. All he asserted was that he had "expected" MW to have done various checks based on what was stated on their website.[52] He had formed the impression that they looked like a reputable business, but did not know for a fact exactly what checks MW had done or what documents MW had obtained in respect of the Companies. The DJ thus correctly observed (GD at [36]) that it was only during the trial that the appellant came to know precisely what checks MW had performed and what documents they had obtained.

79 The thrust of the appellant's argument was that since MW had *appeared* reputable, he expected that MW would have had already performed proper CDD. Thus, he had no need to be overly concerned with what he deemed to be "low-risk" involvement with the Companies. But it cannot be gainsaid that merely

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49 AS at paras 50–51.

50 AS at paras 57–64.

51 AS at para 57.

52 NE, 14 April 2021 at p 139 (RA at p 711, ln 6–19).

perusing MW's website was not a form of CDD *on the Companies* and could not by any stretch of the imagination constitute an act of supervision. Even assuming that MW did in fact perform proper CDD, as the DJ noted (GD at [37]), the appellant's reliance on checks done by third parties such as MW did not discharge him of his obligations to personally check and/or to supervise the Companies' affairs.

80 The same can be said for the appellant's reliance on checks by DBS. In his CAD statement dated 19 February 2013, the appellant asserted: "I think the banks will check the backgrounds of the foreign directors before approving their corporate bank account. Hence, if the banks had approved the application, the companies and foreign directors should be fine".[53] This attitude was maintained in the appellant's written submissions.[54] In short, his mindset was that since the Companies and foreign directors had passed muster with DBS, there was no reason for him to make further inquiries or harbour additional concerns.

81 I accept that it may have been reasonable to assume that DBS's checks as a top-tier bank were deemed adequate for the bank to be satisfied that corporate banking accounts could be opened. But even if the CDD requirements of DBS were met, this would serve at best to fortify the appellant's CDD efforts *prior* to assuming the nominee directorship appointments, *ie*, during Phase 1. However, on the facts, it would appear that he only came to know of the opening of the DBS bank accounts on 1 November 2012, when Kelvin Mun handed over the corporate secretarial files of the Companies to the appellant *after* the date of

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53 RA at p 1396, Exhibit P31, Answer to Question 21.

54 AS at para 48.

his registration as a nominee director.[55] As with his reliance on MW's checks, his reliance on DBS's checks cannot be construed as him having personally exercised supervision over the Companies' affairs. Crucially, conducting his own independent checks remained his personal responsibility during Phase 2.

Kelvin Mun and MW did not raise any red flags about the Companies

82 As alluded to above at [79], the appellant's duties as a director were personal to him and independent of third parties like Kelvin Mun and MW. It did not matter even if Kelvin Mun and MW did not raise any red flags to the appellant about the Companies. As the DJ rightly noted (GD at [53]), *Abdul Ghani* does not stipulate that a director would only be in breach of his duties under the CA if he had failed to act in the presence of red flags. While the red flags may not have been explicitly surfaced to him, this did not in any way minimise or lessen his basic obligations and duties as a director.

83 However, I do note that Kelvin Mun's testimony was guarded and rather equivocal. He claimed that he could not remember if the appellant had asked him any questions about the Companies or why MW decided to end their services.[56] Nevertheless, this point does not take the appellant's case very far. As a director, he was expected to undertake duties of supervision over the Companies' affairs and Kelvin Mun was not an officer or representative of the Companies.

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55 NE, 14 October 2019 at p 101 (RA at p 133, ln 13–16); NE, 14 April 2021 at p 7 (RA at p 579, ln 14–16).

56 NE, 14 October 2019 at pp 66–67 (RA at p 98, ln 25 to p 99, ln 5).

Reliance on communications with "Florina"

84 The appellant also alleges that the DJ erred in finding that he did not verify whether "Florina" had the authority to act on behalf of the Companies.[57] The appellant argues that the foreign directors signed the NSIAs which provided "Florina's" e-mail address as the point of contact thus establishing her legitimacy as a representative of the Companies. Notably, however, "Florina" had been the sole intermediary facilitating the purported signing of the NSIAs by the foreign directors. I have already highlighted the concerns with the execution of the agreements at [66]–[70] above. Moreover, it is not even clear whether the purported foreign directors ever actually signed the NSIAs. There was simply no reliable basis for him to accept "Florina's" authority and he had never sought any verification of her identity to begin with. Furthermore, the appellant's reliance on Kelvin Mun's physical meeting with two of the purported foreign directors to allay any concerns about "Florina's" identity/authority is misplaced.[58] This is because Kelvin Mun was only ever in contact with "Iho Khal", and neither the appellant nor Kelvin Mun had ever met "Florina" face to face.

85 During the course of his directorship of the Companies, the appellant arranged for bank documents to be collected from Kelvin Mun's office, before posting them to several overseas addresses in Beirut, Lebanon, as provided by "Florina".[59] He did not inquire as to why he was instructed to forward the documents to an address in Beirut, which was not the address of any of the

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57 AS at para 72.

58 AS at paras 73–74.

59 RA at pp 1403–1404, Answers to Questions 59 and 60.

authorised signatories of the Companies' bank accounts.[60] There was no checking of bank statements as no bank letters were opened.[61] He did not verify with "Florina" the identities of the intended recipients or their roles in the Companies.[62] He also did not check with the foreign directors on whether they received the bank documents.[63]

86 In respect of "Florina's" requests to courier the bank tokens, he did not inquire why she had provided him with details of two different recipients on separate occasions and two different addresses in Lebanon.[64]

87 Finally, I am not persuaded that the appellant's explanation for not checking with "Florina" on the discrepancies of the addresses which the documents were sent to is reasonable. The appellant explained that it was common for international trading businesses to have different offices in different countries.[65] But even if this could have been possible, he did not offer any credible basis for making this sweeping assumption in relation to *all* the Companies. Moreover, the names of the recipients were not the names of the foreign directors. Even if this could be attributed to the management practice of certain companies, where certain administrative matters are handled by other staff members, there was once again no evidential basis for such an assumption to be readily made in relation to the Companies in question. As such, these

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60 NE, 15 April 2021 at p 46 (RA at p 772, ln 13–16 and ln 20–28).

61 RA at p 1509, Exhibit P34, Answer to Question 37; RA at p 763, ln 30 to p 764, ln 6.

62 NE, 15 April 2021 at p 45 (RA at p 771, ln 1–17).

63 NE, 15 April 2021 at p 46 (RA at p 772, ln 29–32).

64 NE, 15 April 2021 at p 48 (RA at p 774, ln 7–29); NE, 15 April 2021 at pp 50–51 (RA at p 776, ln 21 to p 777, ln 11).

65 NE, 15 April 2021 at p 48 (RA at p 774, ln 29–31).

arguments were based on pure speculation. They do not assist the appellant's case in light of the host of other lapses and inaction on his part.

Relevance of supervision after investigations began

88 I agree with the DJ that the appellant's conduct post-February 2013 (*ie*, in Phase 3) in co-operating with the CAD is irrelevant to whether he did supervise the Companies' affairs. The fact that the CAD investigations were underway was an obvious "red flag" for the appellant that things could be amiss. After having co-operated and allegedly carrying out more supervision in the course of 2013, the appellant still did not uncover anything (retrospectively) but it was already too late by then. Any purported acts of supervision by the appellant after the CAD investigations had commenced is irrelevant to the charges as the stolen properties had already been dealt with by the Companies.

Summary of my observations for Issue 1

89 In the overall analysis, the DJ was entitled to find that the appellant's admissions in his CAD statements were consistent with his oral testimony and to give full weight to his account. I do not see how the DJ had erred in relying on those statements. Viewing the appellant's evidence in totality, he clearly adopted a cavalier attitude towards his role as a nominee director and his director's duties vis-à-vis the Companies. He admitted to the following crucial facts which reflected his complete lack of supervision:

(a) He had never met "Florina" or any of the foreign directors and did not know their true identities (see [75]–[76] and [80] above).

(b) He assumed the appointments as a nominee director of the Companies on the same day after "Florina" e-mailed him on 2 October

2012, after conducting two desktop ACRA and IRAS searches (see [52]–[53] above).

(c) He did not conduct any background checks on the foreign directors and the Companies' business operations and he was unaware who the foreign directors really were or what the Companies actually did (see [75]–[76] above).

(d) He had no control over the Companies' banking activities but was only acting on "Florina's" instructions (see [76] and [85]–[86] above).

(e) He did not check any of the Companies' bank statements or open any bank letters (see [62] and [85] above).

90 In his eagerness to offer his services to "Florina", the appellant did not exercise basic due diligence before undertaking the nominee directorships. On the strength of two cursory desktop searches with ACRA and IRAS on Rivoli, he gamely went ahead to undertake all the appointments on 2 October 2012, with next to no consciousness of what the Companies actually did or how they were operating. Pertinently, any purported CDD activities ought to have been carried out in Phase 1, *ie*, prior to (and including) 2 October 2012. The CDD activities that he actually undertook in Phase 1 were in any event purely perfunctory. This did not amount to supervision.

91 In Phase 2, he conducted more cursory checks and simply assumed that others before him (*ie*, Kelvin Mun/MW and DBS) must have performed adequate checks. He placed unquestioning reliance on the unverified statements of others, including "Florina" (who may or may not have been a pseudonym for "Iho Khal" or some other person of unascertained identity). He took all that had

been communicated to him purely at face value, acting only as a "post-box" through which the Companies would receive and send out all bank documents. This did not amount to supervision either.

92 In effect, the appellant adopted a "don't ask, don't tell" policy. There was no evidence of any "system" of checking, let alone any genuine "supervisory infrastructure" in place.

Issue 2: Whether the appellant met the standard of reasonable diligence expected of a company director

The applicable legal principles

93 There may have been no detailed case law guidance in 2012 or 2013 on the precise scope of nominee directors' duties since the events in question took place pre-*Abdul Ghani*. On then-existing legal principles, the required standard of proof of "reasonable diligence" under s 157(1) of the CA was laid down in *Lim Weng Kee v Public Prosecutor* [2002] 2 SLR(R) 848 (at [30]). The appellant was expected to exercise the same degree of diligence as a reasonable director found in his position, measured against an objective standard.

94 As a nominee director, the appellant was required to observe duties of care, skill and diligence just like any other director. The law draws no distinction between the types of duties owed by different categories of directors; the standard is not any less for a nominee director: *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 (at [136]), citing *Prima Bulkship Pte Ltd (in creditors' voluntary liquidation) and another v Lim Say Wan and another* [2017] 3 SLR 839 (at [43]).

95 The law is not controversial, in so far as *Abdul Ghani* has outlined the applicable legal principles in evaluating whether the standard of reasonable diligence has been met. The duty to supervise and monitor the Companies' affairs was an ongoing and continuing duty once the appellant assumed the appointment of a director. The fact that he was a qualified accountant with skill and experience and some knowledge of what director's duties entailed would also have to be taken into account, as the DJ rightly did (GD at [56]–[58]), in determining the standard of reasonable diligence expected of him: see *Abdul Ghani* at [86].

Lack of specific guidelines and risk assessment

96 The appellant sought to analogise his CDD duties in terms of risk assessment with the requirements placed on banks in accordance with para 4.28 of the MAS 626 Notice, given the lack of specific guidelines for nominee directors at the material time. I turn to briefly address the appellant's arguments in this regard.

97 Paragraph 4.28 of the MAS 626 Notice provides as follows:

> **Reliance on Identification and Verification Already Performed**
>
> 4.28 When a bank ("acquiring bank") acquires, either in whole or in part, the business of another financial institution (whether in Singapore or elsewhere), the acquiring bank shall perform CDD measures on the customers acquired with the business at the time of acquisition except where the acquiring bank has —
>
> (a) acquired at the same time all corresponding customer records (including customer identification information) and has no doubt or concerns about the veracity or adequacy of the information so acquired; and
>
> (b) conducted due diligence enquiries that have not raised any doubt on the part of the acquiring bank

> as to the adequacy of AML/CFT measures previously adopted in relation to the business or part thereof now acquired by the acquiring bank.

98 I make two observations in this connection. The first is that the guidelines in para 4.28 of the MAS 626 Notice pertain to how banks are required to perform CDD or may be exempt from doing so on another bank's existing clients when taking over a banking business. The stage at which due diligence is expected to be exercised is equivalent to Phase 1 in our present case. As I have already reiterated above at [54]–[55] and [90], Phase 1 is distinct from Phase 2 where the director's duty to supervise is engaged upon being appointed as a director.

99 The second observation is that the paucity of specific guidelines at the material time for the conduct of nominee directors is of no consequence in the present case, given that the charges as framed alleged that the appellant did not undertake *any* supervision. Crucially, this case was never concerned with the adequacy of supervision which may engage the issue of lack of guidelines. Rather, the whole inquiry was directed at whether the appellant had exercised any supervision *at all*. To that extent, the appellant is arguably correct in his contention that if he had exercised even a modicum of supervision, then the charges might not have been made out.

100 The appellant maintains that he did undertake a risk assessment and conduct CDD before taking on the appointments in question. He asserts that the preliminary CDD that was conducted did not raise any "red flags" as far as he was concerned. It bears repeating that this is not relevant to the charges which pertain to the appellant's alleged failure to exercise any supervision over the affairs of the Companies; such supervision was of course expected of him *after* he had been appointed a director. On the facts, the quality of his risk assessment

(or CDD) is ultimately immaterial to the charges in question. In any event, any CDD conducted by the appellant (which ordinarily should all have been conducted prior to his appointment) should not be confused with the separate requirement for him to exercise supervision over the affairs of the Companies in discharge of his duties as a director. It did not matter that, rightly or wrongly, the appellant had classified the Companies as being of "low risk". Plainly, he was under a continuing duty to supervise once he agreed to assume the appointments.

101 On a more general note, directors assume risks as well as responsibilities. This should be well understood by anyone taking on such appointments, and more so in the case of a qualified accountant like the appellant who had chosen to undertake the role of a nominee director as a commercial enterprise for a large number of companies. The nominee should also be presumed to have voluntarily undertaken the full extent of risk based on his own risk assessment, which may have been extensive, sub-par or entirely lacking.

102 By his own admission, the appellant clearly understood that it was "risky to be a nominee director".[66] Regrettably, his risk assessment in the present case was sub-par at best, and his supervision was non-existent.

103 The primary issue is whether the DJ had erred in applying the law to the facts at hand. When the appellant's conduct is viewed in totality, I agree with the DJ that he had failed to exercise the same degree of diligence as would be expected of a reasonable director found in his position.

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[66] RA at p 1398, Exhibit P31, Answer to Question 30.

Issue 3: Whether causation was made out

104 Finally, moving to the issue of causation, I do not accept the appellant's contention that *Abdul Ghani* stands for the proposition that the phrase "resulted in" as referenced in the charges entails proof of a higher degree of causation than the term "attributable to" which is found in s 59 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed).[67]

105 As highlighted in *Abdul Ghani* (at [76]) in context of the discussion pertaining to the interpretation of the term "attributable to", the main consideration is whether the offender could and should have taken steps to prevent the offence. In my view, it suffices that the respondent had established that the unlawful transfers could have been averted if the appellant had acted with reasonable diligence. It is unnecessary to go further and require evidence that the fund transfers *would* have been averted if the appellant had acted with reasonable diligence and exercised supervision over the Companies' affairs. As emphasised above, the essential inquiry is whether the appellant had exercised supervision in Phase 2, *after* he had accepted his appointment and prior to the unlawful fund transfers occurring.

106 Even if the DJ had erred in relying on *Abdul Ghani*, there is no reason why the phrase "resulted in" would entail proof of the appellant's actions being the *sole* direct and proximate cause of the unlawful acts. The phrase is not a term of art. There is no requirement for proof of such a high degree of causation, and certainly not to the point where it had to be shown that his failure to

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67 AS at para 92.

supervise the Companies was the sole cause of the unlawful acts having taken place.

107 The appellant also argues that the "immediate causative factor" resulting in the Companies receiving and transferring moneys from its bank accounts was because Kelvin Mun received the bank PINs and misled him by not informing him that he had forwarded banking PINs to the Companies.[68] This appears to be a red herring since the appellant himself knowingly conveyed bank documents to the Companies and was well aware that bank accounts had been set up and were being operated.

108 I conclude that the DJ did not err in her findings of fact and in ultimately finding that the appellant's lack of supervision over the Companies' affairs had resulted in the Companies dealing with the stolen properties. As her findings were not plainly wrong or against the weight of the evidence, I affirm her decision to convict the appellant as charged.

Sentence

109 The appellant was charged in 2018 for offences spanning from 2012 to 2013, while the sentencing framework in *Abdul Ghani* was laid down only in 2017. An offender whose sentencing post-dates the delivery of a sentencing guideline judgment should be sentenced according to the new framework even if it was established after the date of commission of the offence: see *Adri Anton Kalangie v Public Prosecutor* [2018] 2 SLR 557 at [53].

110 The DJ found the appellant to be reckless but less culpable than the offender in *Abdul Ghani*. I agree with the DJ's finding (GD at [76]), that the

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[68] AS at paras 95–98.

appellant's conduct was reckless. The relevant circumstances of his reckless conduct have been elaborated upon above in addressing why his conviction is upheld on appeal. The custodial threshold was clearly crossed.

111 In any event, in *Abdul Ghani*, the offender was sentenced to four weeks' imprisonment where he was found to have acted recklessly. I accept the DJ's assessment that the appellant's culpability is slightly lower than that of the offender in *Abdul Ghani*, as the latter had been put on notice of unlawful transactions by receiving certain recall notices for transactions which took place in the company's account, with one notice even making specific reference to a probable fraudulent transaction. Moreover, although the appellant was convicted after trial, it was evident that he had rendered full co-operation to the CAD from the onset of their investigations. In the premises, the global sentence of six weeks' imprisonment is appropriate. In my assessment, it is not manifestly excessive.

112 The DJ's decision to order disqualification under s 154(2)(*b*) read with s 154(4)(*b*) of the CA was amply justified on the facts. I see no reasons for interfering with the order.

Conclusion

113 For the reasons set out above, the appeal against conviction and sentence is dismissed.

See Kee Oon
Judge of the High Court

Suresh s/o Damodara and Leonard Chua Jun Yi (Damodara Ong LLC) for the appellant;
Stacey Fernandez and Samuel Chew (Attorney-General's Chambers) for the respondent.