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

[2024] SGHC 77

Magistrate's Appeal No 9176 of 2022

Between

Yeo Kee Siah

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9177 of 2022

Between

Ho Yik Fuh

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law — Appeal]
[Criminal Law — Offences — Property — Cheating]

[Criminal Procedure and Sentencing — Sentencing — Appeals]

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Yeo Kee Siah
v
Public Prosecutor and another appeal

[2024] SGHC 77

General Division of the High Court — Magistrate's Appeals No 9176 and 9177 of 2022
Vincent Hoong J
29 November 2023

19 March 2024 Judgment reserved.

Vincent Hoong J:

Introduction

1 Mr Yeo Kee Siah ("Yeo") and Mr Ho Yik Fuh ("Ho") (collectively, the "Appellants") were involved in companies dealing with parallel imported cars in Singapore. The companies which Yeo managed parallel imported cars into Singapore and supplied them to various retailers, including companies of which Ho was a director. These parallel imported cars would then be sold to end buyers.

2 In the course of their dealings, Yeo and Ho entered into an agreement where the companies managed by Yeo would import cars from Japan into Singapore and supply them to companies of which Ho was a director. To pay for the cars imported and supplied, Ho's companies had various financing arrangements with banks.

3 According to the Prosecution, the following occurred in the course of the dealings between the companies of Yeo and Ho which gave rise to offences of cheating and wilful falsification of documents with the intent to defraud:

(a) First, as part of the arrangement between Ho and Yeo, Yeo's companies would have the imported cars physically delivered to the premises of Ho's companies. These cars would then be offered for sale to customers of Ho's companies. When a car was sold to an end buyer, Ho would ask Yeo to register the car in the end buyer's name through the Land Transport Authority ("LTA"). However, Yeo would only issue an invoice and delivery note for the car to one of Ho's companies *upon the request* of Ho. This led to occasions where the invoices and delivery notes were issued by Yeo's companies *after* the cars had already been sold and registered in the names of the end buyers. Despite the above, these invoices and delivery notes were then used by Ho to apply for financing from various banks. In other words, on these occasions, financing was obtained *after* the cars were already registered in the names of the end buyers using invoices and delivery notes which were also issued *after* the cars had been registered in the names of the end buyers. These gave rise to charges against the Appellants which I shall refer to as the "Financing After Registration Charges" for convenience.

(b) Second, there were occasions when the same cars were listed on multiple invoices and delivery notes bearing different dates which were issued by Yeo's companies. These invoices and delivery notes were used by Ho's companies to obtain financing from multiple banks. These gave rise to charges against the Appellants which I shall refer to as the "Double Financing Charges" for convenience.

4 Separately, according to the Prosecution, Ho also cheated a company called Wirana Worldwide Pte Ltd ("Wirana"). Wirana was said to be deceived into providing financing on the pretext that genuine cars were sold by an entity called Ping Ying Holdings Pte Ltd ("Ping Ying") to Wirana, but that these cars were delivered to one of Ho's companies to be held on trust for Wirana until the former had fully repaid Wirana for the purchase of the cars. In reality, no such cars were delivered by Ping Ying. These gave rise to charges against Ho which I shall refer to as the "Wirana Charges" for convenience.

5 In the court below, Ho claimed trial to 194 charges, comprising: (a) 117 charges under s 420 of the Penal Code (Cap 224, 1985 Rev Ed) (the "1985 PC") for cheating offences committed against three banks as well as Wirana; and (b) 77 charges under s 477A read with s 109 of the 1985 PC for abetting Yeo by instigating him to wilfully make falsified sales invoices relating to cars sold by Yeo's companies with intent to defraud. Yeo claimed trial to 152 charges, comprising: (a) 76 charges under s 420 read with s 109 of the 1985 PC for abetting Ho by intentionally aiding him to cheat three banks; and (b) 76 charges under s 477A of the 1985 PC for wilfully making falsified sales invoices relating to cars sold by Yeo's companies with intent to defraud.

6 Following the trial, the District Judge (the "DJ") convicted the Appellants of the following charges:

(a) Yeo was convicted of 72 charges under s 420 read with s 109 of the 1985 PC and 72 charges under s 477A of the 1985 PC; and

(b) Ho was convicted of 116 charges under s 420 of the 1985 PC and 72 charges under s 477A read with s 109 of the 1985 PC.

7 The DJ acquitted the Appellants of some charges for various reasons (see [44] below for a summary of the charges which the Appellants were acquitted of and the DJ's reasons for acquittal). The Prosecution has not appealed against the DJ's decision in relation to these charges.

8 In the case of Yeo, the DJ imposed a total sentence of 40 months' imprisonment. In the case of Ho, the DJ imposed a total sentence of 15 years' imprisonment. The DJ's grounds of decision are set out in *Public Prosecutor v Ho Yik Fuh and another* [2023] SGDC 96 (the "GD").

9 The Appellants are dissatisfied with their convictions and sentences and have appealed against the DJ's decision. Having considered the record of appeal as well as the parties' submissions, I am satisfied that the DJ did not err in convicting the Appellants of the charges. I also do not find the individual sentences or the total sentence imposed by the DJ to be manifestly excessive. Therefore, I dismiss the Appellants' appeals against conviction and sentence.

10 I now set out the reasons for my decision.

Background facts

The parties

11 Ho was a director of the following companies: (a) Frankel Motor Pte Ltd ("Frankel Motor"); (b) Supreme Motor Pte Ltd ("Supreme Motor"); and (c) Frankel Leasing Pte Ltd ("Frankel Leasing"). Frankel Motor, Supreme Motor and Frankel Leasing were in the business of selling parallel imported cars to end buyers. These parallel imported cars were procured from suppliers who purchased new cars from car dealers in Japan and imported them into Singapore.

12 In the court below, Frankel Motor, Supreme Motor and Frankel Leasing were collectively referred to as the "Frankel group of companies" though they were not formally associated with each other. For consistency, I will similarly refer to them as the "Frankel group of companies" where appropriate.

13 Yeo was a director of Blue Motor Works Pte Ltd ("Blue Motor") as well as a manager of Batavia Motor Pte Ltd ("Batavia") and Natuna Automobile Pte Ltd ("Natuna"). Blue Motor, Batavia and Natuna were in the business of parallel importing cars into Singapore and supplying these cars to retailers, including the Frankel group of companies who would then sell the cars to end buyers.

The Frankel group of companies' financing arrangements with banks

14 To finance its purchase of cars from suppliers, the Frankel group of companies had in place financing arrangements with various banks. This included arrangements with Oversea-Chinese Banking Corporation Limited ("OCBC"), VTB Bank Europe plc ("VTB") (formerly known as Moscow Narodny Bank) and The Bank of East Asia Limited ("BEA"). I briefly set out below the financing arrangements with the three banks:

(a) First, there was a financing arrangement between Frankel Motor and OCBC. Under this arrangement, OCBC extended an invoice financing facility to Frankel Motor of up to SGD 1.5 million.[1] This was secured by the following: (i) a deposit of not less than SGD 500,000;[2] (ii) a floating charge over all present and future assets of Frankel Motor,[3]

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1 Exhibit P687: OCBC Credit Facilities Letter dated 14 July 2005 at para 1.5.

2 Exhibit P687: OCBC Credit Facilities Letter dated 14 July 2005 at para 8.4.

3 Exhibit P687: OCBC Credit Facilities Letter dated 14 July 2005 at para 8.5.

which included all the motor vehicles (free from any encumbrances as may from time to time be purchased by Frankel Motor and financed by OCBC) and all the accessories and parts as well as all book debts, account receivables and other debts, revenues and claims present and future;[4] and (iii) a personal guarantee from Ho and two others.[5] As part of this invoice financing facility, the amounts drawn were to be repaid within 60 days of drawdown[6] during which interest was payable at 0.75% above OCBC's prime lending rate per annum,[7] failing which, default interest at 4.75% above OCBC's prime lending rate per annum was payable.[8]

(b) Second, there was a financing arrangement between Supreme Motor and VTB. Under this arrangement, VTB extended an invoice financing facility to Supreme Motor of up to SGD 3 million.[9] This was secured by the following: (i) a deposit of SGD 2 million;[10] (ii) a personal guarantee from Ho and one other person of SGD 6 million;[11] (iii) a corporate guarantee given by Frankel Motor of SGD 6 million;[12] (iv) a

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4 Exhibit P687: OCBC Deed of Debenture (Floating Charge) dated 20 April 2005 at para 10(1)(a).

5 Exhibit P687: OCBC Credit Facilities Letter dated 14 July 2005 at para 8.6.

6 Exhibit P687: OCBC Credit Facilities Letter dated 14 July 2005 at para 2.7.

7 Exhibit P687: OCBC Credit Facilities Letter dated 14 July 2005 at para 3.3.

8 Exhibit P687: OCBC Credit Facilities Letter dated 14 July 2005 at para 10.

9 Exhibit 1D5: Moscow Narodny Bank Credit Facilities Letter dated 10 February 2006 at para 1.

10 Exhibit 1D5: Moscow Narodny Bank Credit Facilities Letter dated 10 February 2006 at para 5(a).

11 Exhibit 1D5: Moscow Narodny Bank Credit Facilities Letter dated 10 February 2006 at para 5(b).

12 Exhibit 1D5: Moscow Narodny Bank Credit Facilities Letter dated 10 February 2006 at para 5(c).

charge on goods financed by VTB;[13] and (v) an equitable assignment of sales proceeds of vehicles financed by VTB.[14] As security for the various lines of credit extended to Supreme Motor, VTB had a first floating charge over the assets of Supreme Motor.[15] As part of this invoice financing facility, the amounts drawn were to be repaid within 120 days of drawdown[16] during which interest was payable at 0.5% below VTB's prime rate per annum,[17] failing which, default interest at 3% above the usual interest rate was payable.[18]

(c) Third, there was a financing arrangement between Frankel Leasing and BEA. According to the documents adduced in the court below, BEA extended a trust receipt financing facility to Frankel Leasing for the purchase of new cars as well as an invoice financing facility of up to SGD 525,000.[19] These were secured by the following: (i) a personal guarantee from Ho;[20] (ii) a corporate guarantee given by Frankel Motor;[21] and (iii) a debenture by way of a fixed and floating

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13 Exhibit 1D5: Moscow Narodny Bank Credit Facilities Letter dated 10 February 2006 at para 5(d).

14 Exhibit 1D5: Moscow Narodny Bank Credit Facilities Letter dated 10 February 2006 at para 5(e).

15 Exhibit 1D28: Moscow Narodny Bank Deed of Charge dated 8 March 2006 at para 3(A).

16 Exhibit 1D5: Moscow Narodny Bank Credit Facilities Letter dated 10 February 2006 at para 1.

17 Exhibit 1D5: Moscow Narodny Bank Credit Facilities Letter dated 10 February 2006 at para 3.1.

18 Exhibit 1D5: Moscow Narodny Bank Credit Facilities Letter dated 10 February 2006 at para 3.2.

19 Exhibit 1D4: BEA Banking Facilities Letter dated 13 September 2006 at paras 4 and 5.

20 Exhibit 1D4: BEA Banking Facilities Letter dated 13 September 2006 at para 1.

21 Exhibit 1D4: BEA Banking Facilities Letter dated 13 September 2006 at para 2.

charge on the assets of Frankel Leasing.[22] As part of the facility, the amounts drawn were to be repaid within 120 days of drawdown[23] during which interest was payable at the Singapore Interbank Offered Rate plus 3% per annum,[24] failing which, penalty interest at 4% above BEA's prime rate per annum was payable.[25]

The agreement between Ho and Yeo and undisputed facts relating to their arrangement

15 As stated above (at [2]), Yeo and Ho entered into an agreement where the companies managed by Yeo would import cars from Japan into Singapore and supply them to the Frankel group of companies. These cars would then be offered for sale to customers of the Frankel group of companies.

16 I briefly summarise the undisputed aspects of this arrangement:

(a) When a car was imported by any of the companies managed by Yeo from Japan into Singapore, the car would be physically delivered to the premises of the Frankel group of companies. One key for the car would be given to the employee in charge of the premises.

(b) The car would then be offered for sale to customers of the Frankel group of companies. At this point of time, an invoice and delivery note for the car would not necessarily be issued by Yeo to the relevant company in the Frankel group of companies. Rather, Yeo would

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22 Exhibit 1D4: BEA Banking Facilities Letter dated 13 September 2006 at para 3.

23 Exhibit 1D4: BEA Banking Facilities Letter dated 13 September 2006 at para 1.

24 Exhibit 1D4: BEA Banking Facilities Letter dated 13 September 2006 at para 1.

25 Exhibit 1D4: BEA Banking Facilities Letter dated 13 September 2006 at para 7.8.

only issue an invoice and delivery note for the car if and when instructions were given by Ho or his staff for these to be issued.

(c) When the car was sold to an end buyer, Yeo would be informed and given the necessary details for him to proceed with the registration of the car in the end buyer's name in the vehicle registration system of the LTA. This had to occur because only the importer of the car, *ie*, one of Yeo's companies, was allowed to perform the necessary registration. Upon receiving instructions do so, Yeo would proceed to register the car in the end buyer's name. Again, at this point of time, an invoice and delivery note for the car would not necessarily be issued by Yeo to the relevant company in the Frankel group of companies. Yeo would only issue an invoice and delivery note for the car if and when instructions were given by Ho or his staff for these to be issued.

Ho submitted invoices and delivery notes to the banks which bore dates that were not reflective of the dates on which the cars was supplied to the Frankel group of companies

17 It is undisputed that, on various occasions, Yeo received instructions from Ho or his staff to issue invoices and delivery notes for the car sometime *after* the cars had already been sold to end buyers and registered in the end buyers' names by Yeo in the vehicle registration system of the LTA.

18 Notably, the dates on these invoices and delivery notes were neither reflective of the dates on which the cars were supplied to the Frankel group of companies nor the dates on which the cars were registered in the name of the end buyers. Despite this, these invoices and delivery notes were then used by Ho to apply for financing from the banks which the Frankel group of companies had financing arrangements with. As a result, financing was extended by the

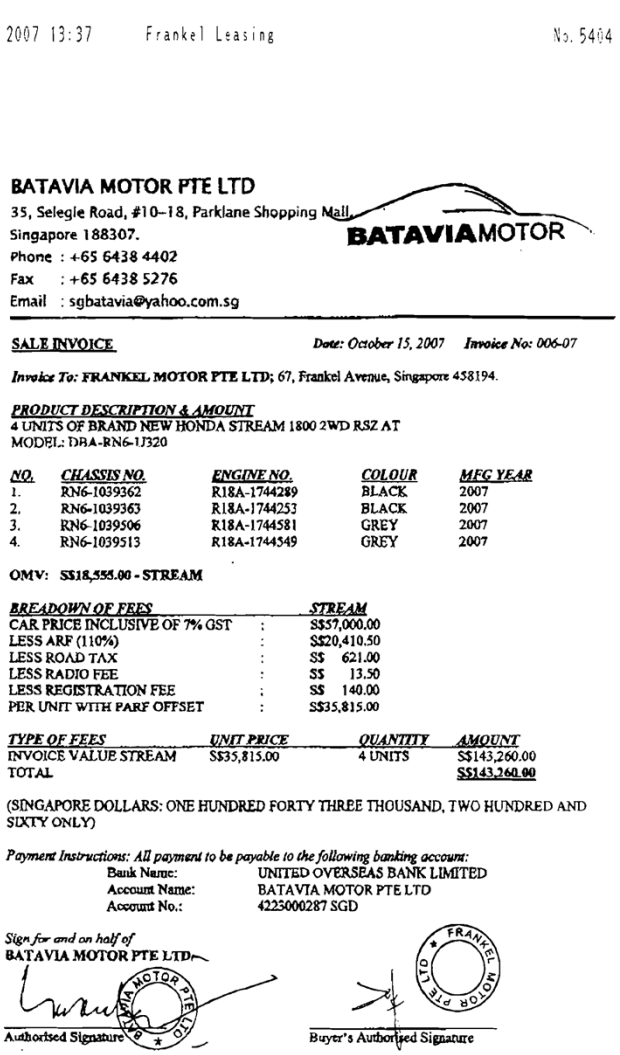
banks to the Frankel group of companies on the basis of these invoices and delivery notes.

19 I set out below one example of an occasion when the invoice and delivery note for various cars supplied to one of the Frankel group of companies bore a date which was not reflective of the actual dates the cars were registered in the name of the end buyers, and which was then used to apply for financing:

(a) Batavia issued a sales invoice dated 15 October 2007 and a delivery note dated 15 October 2007 to Frankel Motor.[26] The invoice and delivery note stated that four cars were sold by Batavia to Frankel Motor for a total price of SGD 143,260. I reproduce below the invoice and delivery note which was issued by Batavia to Frankel Motor:

[26] Exhibits P234 and P235.

17. Oct. 2007 13:37 Frankel Leasing No. 5404 P. 2/5



BATAVIA MOTOR PTE LTD
35, Selegie Road, #10–18, Parklane Shopping Mall,
Singapore 188307.
Phone : +65 6438 4402
Fax : +65 6438 5276
Email : sgbatavia@yahoo.com.sg

BATAVIAMOTOR

SALE INVOICE *Date: October 15, 2007* *Invoice No: 006-07*

Invoice To: **FRANKEL MOTOR PTE LTD;** 67, Frankel Avenue, Singapore 458194.

PRODUCT DESCRIPTION & AMOUNT
4 UNITS OF BRAND NEW HONDA STREAM 1800 2WD RSZ AT
MODEL: DBA-RN6-1J320

NO.	*CHASSIS NO.*	*ENGINE NO.*	*COLOUR*	*MFG YEAR*
1.	RN6-1039362	R18A-1744289	BLACK	2007
2.	RN6-1039363	R18A-1744253	BLACK	2007
3.	RN6-1039506	R18A-1744581	GREY	2007
4.	RN6-1039513	R18A-1744549	GREY	2007

OMV: S$18,555.00 - STREAM

BREADOWN OF FEES		*STREAM*
CAR PRICE INCLUSIVE OF 7% GST	:	S$57,000.00
LESS ARF (110%)	:	S$20,410.50
LESS ROAD TAX	:	S$ 621.00
LESS RADIO FEE	:	S$ 13.50
LESS REGISTRATION FEE	:	S$ 140.00
PER UNIT WITH PARF OFFSET	:	S$35,815.00

TYPE OF FEES	*UNIT PRICE*	*QUANTITY*	*AMOUNT*
INVOICE VALUE STREAM	S$35,815.00	4 UNITS	S$143,260.00
TOTAL			S$143,260.00

(SINGAPORE DOLLARS: ONE HUNDRED FORTY THREE THOUSAND, TWO HUNDRED AND SIXTY ONLY)

Payment Instructions: All payment to be payable to the following banking account:
Bank Name: UNITED OVERSEAS BANK LIMITED
Account Name: BATAVIA MOTOR PTE LTD
Account No.: 4223000287 SGD

Sign for and on half of
BATAVIA MOTOR PTE LTD

BATAVIA MOTOR PTE LTD
Authorised Signature

FRANKEL MOTOR PTE LTD
Buyer's Authorised Signature

Exhibit P235: Invoice issued by Batavia to Frankel Motor dated 15 October 2007

17. Oct. 2007 13:37 Frankel Leasing No. 5434 P. 3/5

P.D

BATAVIA MOTOR PTE LTD
35, Selegie Road, #10-18, Parklane Shopping Mall,
Singapore 188307.
Phone : +65 6438 4402
Fax : +65 6438 5276
Email : sgbatavia@yahoo.com.sg

BATAVIA MOTOR

DELIVERY NOTE

Date: October 15, 2007 **Delivery Note No.:** 006-07

To: **FRANKEL MOTOR PTE LTD**
67, Frankel Avenue, Singapore 458194.

BEING PURCHASE OF
4 UNITS OF BRAND NEW HONDA STREAM 1800 2WD RSZ
MODEL: DBA-RN6-LJ3Z0

NO.	CHASSIS NO.	ENGINE NO.	COLOUR	MFG YEAR
1.	RN6-1039362	R18A-1744289	BLACK	2007
2.	RN6-1039363	R18A-1744253	BLACK	2007
3.	RN6-1039506	R18A-1744581	GREY	2007
4.	RN6-1039513	R18A-1744549	GREY	2007

THE ABOVE VEHICLES HAS BEEN RECEIPT IN GOOD ORDERS AND CONDITIONS.

Sign for and on behalf of
BATAVIA MOTOR PTE LTD
BATAVIA MOTOR PTE LTD
Authorised Signature

FRANKEL MOTOR PTE LTD
Authorised Signature
Company Stamp

Exhibit P234: Delivery note issued by Batavia to Frankel Motor dated 15 October 2007

(b) In reality, the evidence showed that each of the four vehicles were registered in the end buyer's name on much earlier dates –

4 August 2007,[27] 30 August 2007,[28] 12 September 2007[29] and 21 September 2007.[30] None of these dates, however, were reflected in either the invoice or delivery note issued by Batavia.

(c) The invoice and delivery note were then submitted by Frankel Motor to OCBC to obtain an invoice financing loan. On 18 October 2007, OCBC granted an invoice financing loan for the sum of SGD 143,260.[31]

20 On this occasion, in the case of Ho, the following offences were committed according to the Prosecution: (a) an offence of cheating under s 420 of the 1985 PC for deceiving OCBC into believing that the transactions relating to the four vehicles listed in the invoice and delivery note were genuine (see DAC-012407-2013); and (b) an offence under s 477A read with s 109 of the 1985 PC for instigating Yeo, who was the manager of Batavia, to make a false entry in the papers of Batavia by making a false entry in the sales invoice (see DAC-012516-2013).

21 Meanwhile, in the case of Yeo, the following offences were committed according to the Prosecution: (a) an offence under s 420 read with s 109 of the 1985 PC for intentionally aiding Ho to commit cheating by providing him with the sales invoice and delivery note, which allowed Ho to deceive OCBC into believing that the transactions relating to the four vehicles listed in the invoice and delivery note were genuine (see DAC-012593-2013); and (b) an offence

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27 Exhibit P15.

28 Exhibit P14.

29 Exhibit P12.

30 Exhibit P13.

31 Exhibit P262.

under s 477A of the 1985 PC for making a false entry in the papers of Batavia wilfully and with the intent to defraud by making a false entry in the sales invoice (see DAC-012669-2013).

Ho sought financing from multiple banks for the same cars on some occasions

22 Next, there were also occasions when the following occurred:

(a) Yeo furnished Ho with a sales invoice and delivery note addressed to one of the Frankel group of companies which showed that a car listed in the documents had been sold and delivered to the particular company in the Frankel group of companies.

(b) In reality, the car listed in the sales invoice and delivery note had already been sold and delivered earlier to a company in the Frankel group of companies and that company had applied for financing from another bank on the basis of the earlier transaction.

(c) Despite this, the later set of sales invoice and delivery note was used to obtain financing from a second bank.

23 I set out below one example of an occasion when the above occurred:

(a) Batavia issued a sales invoice[32] and delivery note[33] dated 23 October 2007 in which it was stated that Batavia had supplied a car bearing chassis number ACR50-0034009 to Frankel Motor for SGD 60,308.71.

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32 Exhibit P229.

33 Exhibit P228.

(b) However, according to a separate sales invoice dated 27 July 2007,[34] the car bearing chassis number ACR50-0034009 had, along with three other cars, already been supplied earlier by Batavia to Frankel Motor for a total amount of SGD 188,320. This meant that the same car had appeared in two sets of sales invoices bearing different dates.

(c) Further, the evidence showed that the sales invoice dated 27 July 2007 had been used by Frankel Motor to apply for inventory financing from GE Money Pte Ltd ("GE Money") on 30 July 2007. GE Money had, acting on the sales invoice dated 27 July 2007, extended an inventory finance loan of SGD 32,031 in connection with the car bearing chassis number ACR50-0034009.[35]

(d) Despite the above, on 24 October 2007, Frankel Motor proceeded to submit the sales invoice and delivery note dated 23 October 2007 to OCBC to obtain an invoice financing loan.[36] This led to OCBC granting an invoice financing loan for SGD 60,308.71 on 29 October 2007.[37]

24 On this occasion, in the case of Ho, the following offences were committed according to the Prosecution: (a) an offence of cheating under s 420 of the 1985 PC for deceiving OCBC into believing that the transaction relating to the car listed in the sales invoice and delivery note was genuine (see DAC-012484-2013); and (b) an offence under s 477A read with s 109 of the 1985 PC for instigating Yeo, who was the manager of Batavia, to make a false entry in

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34 Exhibit P236.

35 Exhibits P653 and P607.

36 Exhibit P276.

37 Exhibit P264.

the papers of Batavia by making a false entry in the sales invoice (see DAC-012573-2013).

25 Meanwhile, in the case of Yeo, the following offences were committed according to the Prosecution: (a) an offence under s 420 read with s 109 of the 1985 PC for intentionally aiding Ho to commit cheating by providing him with the sales invoice and delivery note which allowed Ho to deceive OCBC into believing that the transaction listed in the sales invoice and delivery note was genuine (see DAC-012650-2013); and (b) an offence under s 477A of the 1985 PC for making a false entry in the papers of Batavia wilfully and with the intent to defraud by making a false entry in the sales invoice (see DAC-012726-2013).

The agreement between Frankel Motor and Wirana

26 Apart from the transactions involving the Frankel group of companies and the companies which Yeo managed, there were also transactions involving Frankel Motor and Wirana. It is undisputed that there was some arrangement between Frankel Motor and Wirana pursuant to an agreement which Ho and Rakesh Tulshyan ("Rakesh"), the managing director of Wirana, had entered into. While the nature of the arrangement between Frankel Motor and Wirana was disputed, at least based on the documents, the arrangement between Frankel Motor and Wirana was one where Wirana provided financing to Frankel Motor for the importation of cars for subsequent sale. I summarise this arrangement based on the documents below:

(a) Ping Ying imported cars into Singapore. These cars were then sold to Wirana. Wirana would pay Ping Ying based on the invoices it received from Ping Ying.

(b) Wirana then on-sold the cars to Frankel Motor. Wirana would collect payments from Frankel Motor when Wirana's invoices to Frankel Motor became due.

(c) The cars were not physically handled by Wirana; rather, they were delivered directly to Frankel Motor by Ping Ying. Frankel Motor stated in its letters to Wirana that the cars were held on trust by Frankel Motor for Wirana until Frankel Motor paid Wirana for the cars.

27 It was undisputed by the Prosecution and Ho in the court below that, in reality, there were no cars being sold by Ping Ying to Wirana before being on-sold to Frankel Motor. According to Ho, the arrangement between Wirana and Frankel Motor was a disguise for an unsecured moneylending arrangement between Wirana and Frankel Motor. According to the Prosecution, however, Wirana was unaware that there were no cars being sold in reality. For this reason, the Prosecution's position was that Wirana was deceived into believing that they were financing Frankel Motor for genuine transactions relating to actual cars supplied by Ping Ying to Frankel Motor through Wirana. This gave rise to various cheating offences under s 420 of the 1985 PC.

Parties' cases at trial

28 I next briefly set out the parties' cases at trial for each category of charges.

The Financing After Registration Charges

The Prosecution's case

29 In relation to the Financing After Registration Charges, the Prosecution's case was that Yeo had furnished Ho with sales invoices and

delivery notes addressed to one of the Frankel group of companies which showed that the cars listed in these documents had been sold and delivered to the relevant company in the Frankel group of companies. This was, however, false as the cars listed had already been sold and registered in the names of the end buyers *before* the dates stated on the sales invoices and delivery notes. Despite this, Ho used these sales invoices and delivery notes as part of his financing applications to the banks. The banks were deceived into believing that the cars were sold and delivered to one of the Frankel group of companies on the dates as stated in the sales invoices and delivery notes. This led to the banks approving the applications for financing by the relevant Frankel group of companies and disbursing funds. According to the Prosecution, therefore, the following offences were committed by Ho and Yeo: (a) in relation to Ho, offences of cheating under s 420 of the 1985 PC and offences under s 477A read with s 109 of the 1985 PC for instigating Yeo to create false sales invoices and delivery notes; and (b) in relation to Yeo, offences of intentionally aiding Ho to commit cheating under s 420 read with s 109 of the 1985 PC and offences of wilfully falsifying sales invoices and delivery notes with the intent to defraud under s 477A of the 1985 PC.

30 In support of its case on the Financing After Registration Charges, the Prosecution largely relied on the following:

(a) First, the Prosecution relied on the objective documentary evidence which showed that the cars listed in the sales invoices and delivery notes had been registered in the names of the end buyers in the vehicle registration system of the LTA before the dates listed on the sales invoices and delivery notes.

(b) Second, the Prosecution relied on the evidence of the bank officers who stated that they would not have considered the representations on the sales invoices and delivery notes which bore various dates to be truthful since the cars had already been registered in the end buyers' names earlier than that. The bank officers also stated that they would not have extended financing to the Frankel group of companies had they known that the cars which they had extended financing for had already been registered in the names of the end buyers as this would have had an impact on the security which they expected to have when extending financing.

(c) Third, the Prosecution relied on the contents of Yeo's investigative statements which he had provided to the Commercial Affairs Department of the Singapore Police Force ("CAD") ("Yeo's CAD Statements"). In Yeo's CAD Statements, Yeo admitted that the sales invoices and delivery notes which formed the Financing After Registration Charges were fictitious documents prepared by Yeo to be used by the Frankel group of companies to obtain financing. In reality, Yeo stated that the cars which were listed in these documents had been delivered earlier and had been paid for. However, as Yeo was still owed amounts by the Frankel group of companies for other cars, these sales invoices and delivery notes were prepared so that Ho could use them to apply for financing from the banks which the Frankel group of companies had financing arrangements with. Yeo also stated that it was Ho who instructed him on the cars to be included in the invoices, which of the Frankel group of companies the invoices should be addressed to and the dates on which the invoices should be issued.

The Appellants' case

31 The Appellants' position in relation to the Financing After Registration Charges was as follows:

(a) First, the Appellants argued that the transactions were genuine and did relate to the sale of genuine cars.

(b) Second, the Appellants asserted that the dates on the delivery notes were irrelevant as the cars were already delivered to the Frankel group of companies *before* the dates on the delivery notes. Further, the Appellants pointed to the fact that the banks concerned did not even require the submission of delivery notes as part of financing applications.

(c) Third, the Appellants argued that the nature of security which the banks had over the assets of the respective company in the Frankel group of companies was generally floating charges. This meant that the cars which were the subject of the financing applications were never pledged to the banks in the first place.

(d) Fourth, Ho, in particular, argued that he was unaware that Yeo had already registered the cars in the names of the end buyers when the financing applications were submitted to the banks. Further, he stated that he had relied on his employees to check that the cars were still in the showroom or warehouse and to prepare the necessary documentation for the financing applications.

(e) Fifth, Ho, in particular, argued that, even if he had known that the cars had been registered in the names of the end buyers before the financing applications were submitted to the banks, there would have

been no deception on the banks. According to Ho, all that was required when he submitted an invoice financing application was an outstanding invoice of a supplier which he needed to make payment for.

(f) In relation to Yeo's CAD Statements, Yeo disputed many parts of his statements which contained incriminating evidence. According to Yeo, his statements contained many inaccuracies for various reasons. These included, for example, claims that he had not read the statements in detail and had signed the statements hastily due to other matters he had to attend to. Yeo also claimed that he would not have been able to use the words which featured in his statements. He therefore sought to retract his confessions in his statements and focused instead on the version of events which he had advanced at the trial.

The Double Financing Charges

The Prosecution's case

32 In relation to the Double Financing Charges, the Prosecution's case was that Yeo had issued sales invoices and delivery notes bearing specific dates, which were addressed to one of the Frankel group of companies and which stated that the cars listed in the invoices and delivery notes had been sold and delivered to the relevant company. These invoices and delivery notes were, however, false as the cars had already been sold and delivered earlier than the dates listed on the invoices and delivery notes to one of the Frankel group of companies and were already the basis of earlier financing applications to other banks or financial institutions. Despite this, the later sets of invoices and delivery notes were used to obtain financing again. The banks were therefore deceived into believing that the cars were sold and delivered to one of the Frankel group of companies on the dates stated in the sales invoices and delivery

notes, and approved the financing applications and extended financing to the relevant company in the Frankel group of companies.

33 In support of its case on the Double Financing Charges, the Prosecution largely relied on: (a) the documentary evidence which showed that financing had been obtained twice for the same cars using different sales invoices and delivery notes which bore different dates; (b) the evidence of the bank officers who stated that they would not have extended financing had they known that the cars were already financed by another financial institution or bank; and (c) Yeo's CAD Statements which contained confessions that Yeo had facilitated Ho's cheating offences by creating the sales invoices and delivery notes which were used to obtain financing from a second bank.

The Appellants' case

34 The Appellants' case in relation to the Double Financing Charges was as follows:

(a) Ho's position was that he did not know of the instances in which financing had been obtained from more than one bank for the same car. In this regard, he stated that he had not instructed Yeo to prepare additional invoices for the same cars. Further, he stated that he would not have signed the financing applications had he been aware that prior financing had already been obtained for the same car from another bank.

(b) Yeo's position was that the Double Financing Charges were a result of mistakes made by him which led to invoices being issued for cars which had already been listed in previous invoices and for which financing had already been obtained by another bank. Yeo also pointed to the fact that it made no sense for him to seek a second payment for

cars which had already been paid for since there were other cars which had been delivered to the Frankel group of companies which he had not been paid for. In relation to Yeo's CAD Statements, Yeo once again disputed the incriminating portions of his statements.

(c) The Appellants also pointed to the fact that the number of transactions which led to financing being obtained from more than one bank was small compared to the total number of transactions. This showed that it was improbable that the Appellants sought to deceive the banks.

The Wirana Charges

The Prosecution's case

35 In relation to the Wirana Charges, the Prosecution's case was that Ho had deceived Wirana into believing that genuine cars were sold by Ping Ying to Wirana, and that these cars had been delivered to Frankel Motor to be held on trust for Wirana until Frankel Motor had fully repaid Wirana for the purchase of the cars. In reality, no such cars were delivered by Ping Ying to Frankel Motor. The Prosecution therefore claimed that, as a result of the deception, Wirana paid Ping Ying for the purported purchase of the cars.

36 In support of its case, the Prosecution largely relied on the following key pieces of evidence:

(a) First, the Prosecution relied on the evidence of Rakesh, the managing director of Wirana, and Raj Ban Singh Sekhon ("Raj"), who helped Rakesh with the operation of Wirana. Rakesh and Raj testified that Wirana had been under the belief that it was purchasing cars from

Ping Ying and on-selling these cars to Frankel Motor as part of an arrangement.

(b) Second, the Prosecution relied on the evidence of Jemme Teo Kok Ping ("Jemme"), who was a shareholder and director of Frankel Motor. Jemme gave evidence that he had seen Raj at Frankel Motor's warehouse on two occasions to check on the cars which had been imported. Jemme also stated that, on one occasion, Rakesh had appeared at Frankel Motor's office and demanded to repossess his cars because Frankel Motor was late in its repayment to Wirana. This showed that Wirana (through the conduct of Rakesh and Raj) genuinely believed that they were involved in the purchase of cars from Ping Ying and the on-selling of the cars thereafter to Frankel Motor.

Ho's case

37 On Ho's part, he accepted that no cars were actually sold by Ping Ying to Wirana before being sold by Wirana to Frankel Motor. Ho also accepted that no cars were actually delivered by Ping Ying to Frankel Motor. Instead, he claimed that the entire arrangement for cars to be sold by Ping Ying to Wirana and subsequently on-sold to Frankel Motor was merely a disguised unsecured moneylending arrangement between Wirana and Frankel Motor. According to Ho, the transactions between Ping Ying, Wirana and Frankel Motor were paper transactions which were designed to prevent the detection of the true arrangement between parties, where Wirana extended loans to Frankel Motor which were secured by personal guarantees from Ho and one other person.

Decision below

38 The DJ found that the Prosecution had proven the Appellants' guilt beyond a reasonable doubt in relation to most of the charges. I briefly set out key aspects of the DJ's decision below.

The Financing After Registration Charges

39 The DJ found that the Prosecution had proven the Financing After Registration Charges, comprising cheating charges and charges under s 477A of the 1985 PC, against the Appellants beyond a reasonable doubt.

40 In relation to the cheating charges, the DJ's decision can be summarised as follows:

(a) The DJ found that the cars were in fact delivered, at the latest, by the time they were registered in the names of the end buyers in the LTA vehicle registration system. As such, the sales invoices and delivery notes which were issued after the cars were registered in the names of the end buyers, and which bore dates that post-dated the date of registration, would have been false. The cars would have, for all intents and purposes, been considered sold to the end buyers. Therefore, it followed that the use of the sales invoices and delivery notes to apply for financing from the banks amounted to deception on the banks.[38]

(b) The DJ rejected the Appellants' defence that the banks could not have relied on the dates stated on the delivery notes since the banks never required the delivery notes to be submitted as part of financing applications. According to the DJ, this failed to take into account that all

[38] GD at [100].

the relevant financing facilities required was that the cars which were being financed form part of the Frankel group of companies' assets so that the cars would also be subject to the floating charges. This was clear from the financing facilities documents of the banks. As the Appellants had applied for the financing facilities after the cars had already been registered in the names of the end buyers, the cars would not have been part of the assets of the Frankel group of companies at the time the financing applications were submitted. The cars would, therefore, not have been subject to any floating charge at the outset. The DJ found that the banks would not have agreed to provide financing for the cars if they had no security over the cars at the outset.[39]

(c) The DJ found that Ho knew, at the time of the applications for financing to the various banks, that the cars had already been registered in the names of the end buyers. The DJ also found that Ho knew that that the transactions in the applications were not genuine as these cars had already been sold to the end buyers earlier and were no longer available as security to the various banks. This was what led Ho to ask Yeo to falsify the dates on the sales invoices and delivery notes to make it appear that the cars were delivered to the Frankel group of companies on dates close to the dates of the applications. This would give the false impression that the cars were delivered just before the applications for financing and hence pre-empt the banks from raising any questions. Hence, Ho had clearly intended to deceive the various banks into believing that the transactions in the said documents were genuine and therefore dishonestly induced the banks into extending financing.[40]

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39 GD at [101] to [106].

40 GD at [107] to [108].

(d) The DJ found that Ho was not a credible witness given the multiple times his evidence changed at trial.[41] The DJ also found Ho to be an evasive witness which was demonstrated during the Prosecution's cross-examination of Ho.[42]

(e) In relation to Yeo, the DJ found that full weight ought to be placed on Yeo's CAD Statements in which he had admitted to preparing sales invoices and delivery notes specifically for Ho to use as part of financing applications to the banks. The DJ took the view that Yeo's claims relating to the inaccuracies in his statements were unfounded. Contrary to Yeo's claim that he did not read his statements and signed them without reading, the DJ noted that Yeo had made an amendment in a statement and was also able to disagree with a suggestion made by the recording officer. Further, he had meticulously reviewed and given his input on the delivery dates of many cars in the annexes to his statements which showed that he had carefully given his statements. Yeo's claim that he did not have a good command of the English language was also not believable given his conduct at the trial as well as the fact that he did not request for a Mandarin interpreter when giving his statements. Ultimately, the DJ found that Yeo had been truthful in his statements to the CAD and, in coming clean on the Financing After Registration Charges (as well as the Double Financing Charges), Yeo had implicated himself as well as Ho. The DJ ultimately found that Yeo was not a credible witness and his version of events as set out in Yeo's

41 GD at [109].

42 GD at [110].

CAD Statements ought to be preferred over his version of events as articulated at the trial.[43]

(f) Therefore, the Prosecution had proven beyond a reasonable doubt that Ho had deceived the banks in the Financing After Registration Charges into believing that the transactions as stated on the invoices and delivery notes were genuine when they were not. The cars in question had already been sold and delivered to the end buyers, at the latest, when the cars were registered in the end buyers' name, which were all before the dates stated in the invoices and delivery notes. The banks were thereby dishonestly induced by the deception and this resulted in them approving the financing applications and extending financing.[44] On Yeo's part, by agreeing to Ho's request to prepare sales invoices and delivery notes which were for the purpose of submitting financing applications after the cars had been registered in the end buyers' names, Yeo had abetted Ho in cheating the banks by intentionally aiding him.[45]

41 In relation to the charges under s 477A of the 1985 PC, the DJ found that Yeo was clearly an officer and/or servant of Blue Motor, Batavia and Natuna given that he was a director of Blue Motor and manager of Batavia and Natuna. For the same reasons as the cheating charges, the DJ found that Yeo had wilfully and with the intent to defraud, falsified the sales invoices and delivery notes by altering the dates on which the cars were sold and delivered to the Frankel group of companies. These sales invoices and delivery notes were papers which belonged to or were in the possession of his employers. He did so

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43 GD at [111] to [116].

44 GD at [118].

45 GD at [119].

for the purpose of abetting Ho to cheat the banks.[46] On Ho's part, he had instigated Yeo to falsify the sales invoices and delivery notes and had, therefore, abetted Yeo in the commission of the offences.[47]

The Double Financing Charges

42 The DJ's decision in relation to the Double Financing Charges can be summarised as follows:

(a) Given the DJ's earlier finding that Ho was not a credible witness (see [40(d)] above), the DJ rejected Ho's defence that he was unaware at the time of the financing applications that financing had already been obtained from another bank for the same cars. The DJ disbelieved Ho's evidence that the Double Financing Charges arose as a result of the oversight or negligence of Ho's employees.[48]

(b) Similarly, given the DJ's earlier finding that Yeo was not a credible witness (see [40(e)] above), the DJ rejected Yeo's defence that the Double Financing Charges arose as a result of mistakes made by Yeo which resulted in the same cars being listed in multiple invoices that were used to obtain financing from more than one bank.[49]

(c) The DJ found that cars were high value items and it would have been simple to remove the cars for which financing had already been obtained from a list of cars which were eligible to be financed. Yet, on multiple occasions, the same cars were used by Ho and Yeo to apply to

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46 GD at [120] to [121].

47 GD at [122].

48 GD at [123].

49 GD at [124].

different banks for financing. The DJ noted, in particular, the "brazenness of Ho's dishonest conduct" which made clear that these could not have been mistakes. After deceiving Wirana into believing that three cars were delivered by Ping Ying to Frankel Motor on two occasions to apply for financing from Wirana, Ho then asked Yeo to prepare three separate fictitious invoices and delivery notes on 23 October 2007 for the same three cars to cheat OCBC, after having used the same cars to apply for financing from GE Money on 30 July 2007.[50]

(d) The DJ therefore found that the Prosecution had proven beyond a reasonable doubt its case against Ho and Yeo in relation to the Double Financing Charges which comprised charges under s 420 of the 1985 PC and s 477A of the 1985 PC.[51]

The Wirana Charges

43 The DJ's decision in relation to the Wirana Charges can be summarised as follows:

(a) The DJ preferred the evidence of Raj and Rakesh (*ie*, that Wirana had been under the belief that it was purchasing cars from Ping Ying and on-selling these cars to Frankel Motor as part of an arrangement) over the evidence of Ho (*ie*, that Wirana was aware that the entire arrangement was merely a disguised unsecured moneylending

50 GD at [125] to [126].

51 GD at [127] to [128].

arrangement between Wirana and Frankel Motor).[52] The DJ set out four reasons for his finding that Raj and Rakesh were telling the truth.

(i) First, their evidence was supported by, and consistent with, the documentary evidence:[53]

(A) In a joint venture agreement ("JVA") involving, *inter alia*, Ho and Rakesh, which related to an entity known as Royal Automobile Pte Ltd,[54] one of the conditions precedent made reference to the sale of motor vehicles by Wirana to Frankel Motor totalling $16,285,000.[55]

(B) Rakesh and Raj also made a full record of Wirana's transactions with Frankel Motor which included information on whether the invoices were paid or unpaid by Frankel Motor.[56]

(C) There were also invoices from Ping Ying to Wirana as well as invoices from Wirana to Frankel Motor which showed the sales of cars from Ping Ying to Wirana and from Wirana to Frankel Motor. The documents were in line with Raj and Rakesh's account of the arrangement between Wirana and Frankel Motor.[57]

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52 GD at [130].

53 GD at [130].

54 Exhibit 1D26 at Clause 2.3.

55 GD at [130(i)].

56 Exhibit P686; GD at [44] and [130(ii)].

57 GD at [130(iii)].

(ii) Second, in his evidence, Raj was able to recall an occasion where he was brought by Ho to locate and view the vehicles which Wirana had purchased from Ping Ying.[58]

(iii) Third, given that the financing by Wirana involved substantial sums, there was no reason for Rakesh to make unsecured loans to the Frankel group of companies without any security as was alleged by Ho, even if Ho's allegation that Rakesh was interested in bigger investment opportunities with Ho was accepted.[59]

(iv) Fourth, if these were straightforward moneylending transactions as Ho contended, there would have been no reason for Rakesh to go through all the trouble with false documentation which pointed towards there being a sale of cars from Ping Ying to Wirana, and then from Wirana to Frankel Motor. Further, the JVA relating to Royal Automobile Pte Ltd was additional evidence which showed that the debt owed by Frankel Motor to Wirana *arose from the sale of cars*. The DJ found that it was reasonable for any prudent business to want such a substantial debt to be recorded in a document. While Ho asserted that this sum actually represented the disguised unsecured moneylending transactions between Wirana and Frankel Motor, the DJ found that this was a bare assertion which was never put to Rakesh during cross-examination.[60]

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58 GD at [45] and [131]; Record of Appeal ("ROA") at pp 2083 to 2086: Notes of Evidence ("NE") for 12 March 2019 at page 116, line 21 to page 119, line 26.

59 GD at [131].

60 GD at [64] and [132].

(b) Given the DJ's earlier finding that Ho was not a credible witness (see [40(d)] above), the DJ did not accept Ho's defence that Wirana was aware that the entire arrangement for cars to be sold by Ping Ying to Wirana and subsequently on-sold to Frankel Motor was merely a disguised unsecured moneylending arrangement between Wirana and Frankel Motor. The DJ was therefore satisfied that the Prosecution had proven the Wirana Charges against Ho beyond a reasonable doubt.[61]

Charges of which the DJ acquitted the Appellants

44 The Appellants were acquitted of a number of charges at the conclusion of the trial. Given that this is not relevant to the present appeal as the Prosecution did not appeal against the DJ's decision, I only briefly summarise the reasons for the Appellants' acquittal of these charges:

(a) First, at the close of the Prosecution's case, the Prosecution applied to withdraw one charge against Ho and two charges against Yeo. This was because the dates on the invoice and the delivery order prepared by Yeo for these charges were *before* the dates of registration of the cars in the end buyers' names, and there was therefore no evidence that these sales invoices and delivery notes were false. The DJ granted the Prosecution's application to withdraw these charges.[62]

(b) Second, the DJ found that a number of charges were not made out against the Appellants as the dates indicated on the sales invoices and delivery notes on some occasions were the same as the dates on which the cars were registered in the names of the end buyers. The DJ

61 GD at [133].

62 GD at [53].

took the view that there was a possibility that after Yeo had sold and delivered the cars to Frankel Motor and issued the sales invoices and delivery notes, these cars were in turn sold by Frankel Motor to the end buyers later in the day and registered in their names. There was insufficient evidence to show that the cars were already registered in the end buyers' names before Yeo had issued the sales invoices and delivery notes or that he knew that the cars had already been registered in the end buyers' names at the time he prepared these documents. Yeo was therefore acquitted of his cheating charges and the corresponding charges under s 477A of the 1985 PC. In the case of Ho, while he was acquitted of the charges under s 477A of the 1985 PC, the DJ found that an amendment to Ho's cheating charges covering these occasions was appropriate since, by the time Ho submitted the applications for financing to VTB, Ho would have been aware that the cars had been registered in the names of the end buyers and were no longer available as security. Despite this, Ho proceeded to submit financing applications and thereby represented that the cars were still available as security for the purposes of the invoice financing applications. The DJ amended Ho's relevant cheating charges covering these occasions and convicted Ho of the charges.[63]

(c) Third, the DJ found that there was one occasion when the sales invoice and delivery note was dated before the registration dates of the cars in the end buyers' names. Hence, there was insufficient evidence to prove that Yeo had intended to abet Ho to cheat VTB on this occasion when he prepared the sales invoice and delivery note. Yeo was therefore acquitted of his cheating charge and corresponding charge under s 477A

63 GD at [134] to [136].

of the 1985 PC. In the case of Ho, while he was acquitted of the charge under s 477A of the 1985 PC, the DJ found that an amendment of Ho's cheating charge was appropriate since, by the time Ho submitted the application for financing to VTB, Ho would have been aware that the cars had been registered in the names of the end buyers and were no longer available as security. The DJ amended Ho's relevant cheating charge covering this occasion and convicted Ho of the charge.[64]

(d) Fourth, the DJ found that there were two charges (*ie*, one of Ho's cheating charges and one of Yeo's charges under s 477A of the 1985 PC) which were duplicitous, given that they were based on the same documents which formed a separate set of charges. The Prosecution accepted this and applied for a withdrawal of the two charges. The DJ granted the Prosecution's application to withdraw these charges.[65]

DJ's decision on sentence

45 The DJ's decision on sentence can be summarised as follows:

(a) As a starting point, the DJ found that the dominant sentencing principle applicable was that of general deterrence, given that the Appellants' cheating offences were committed against banks and financial institutions.[66]

(b) The DJ disagreed with the Prosecution's proposal of a sentencing framework in relation to the Appellants' cheating charges. In this regard, the DJ noted the High Court's guidance in *Public Prosecutor*

64 GD at [137] to [139].

65 GD at [140].

66 GD at [163].

v Sindok Trading Pte Ltd (now known as BSS Global Pte Ltd) and other appeals [2022] 5 SLR 336 ("*Sindok Trading*") (at [29]) that the laying down of sentencing benchmarks should generally be left to the appellate court.[67]

(c) Given the High Court's guidance in *Sindok Trading* (at [29]), the DJ also found the precedent relied upon by Yeo, *Public Prosecutor v So Seow Tiong* [2021] SGDC 203 ("*So Seow Tiong*") to be unhelpful as the District Court there had accepted the Prosecution's proposed sentencing framework and arrived at the sentences based on an application of the sentencing framework which had not been laid down by an appellate court.[68]

(d) The DJ agreed with the Prosecution that Ho's culpability in the commission of the offences was high. There were a number of factors which affected his culpability. First, he was the mastermind of the offences and brought Yeo into the scheme. Second, he abused his position as the main director in charge of the Frankel group of companies to perpetrate his offences. Third, there was direct and indirect financial gain, given that the extending of financing by the banks and Wirana allowed the Frankel group of companies to continue operating and this would have allowed Ho to continue receiving his remuneration as the director of the companies. Fourth, the offences were difficult to detect and the period of offending was from 2006 to 2007. Fifth, the scheme was sophisticated and involved the fraudulent use of commercial documents. In terms of harm, the DJ took the view that the

67 GD at [164].

68 GD at [164].

level of harm caused for each charge depended largely on the amount involved.[69]

(e) The DJ agreed with the Prosecution that Yeo's culpability in the commission of the offences was medium. There were a number of factors which affected his culpability. This included his role as the individual who helped Ho to perpetrate the cheating offences, the limited financial gain he enjoyed, the difficulty in the detection of the offences, the period of offending and the level of sophistication. In terms of harm, the DJ took the view that the level of harm caused for each charge depended largely on the amount involved.[70]

(f) On the question of harm, the DJ noted that there was no evidence which directly showed the losses suffered by the banks and which of the loans extended by the banks had been repaid by Ho.[71] The DJ accepted the Appellants' argument that the proofs of debt filed by the three banks against Ho at the bankruptcy and liquidation proceedings covered all credit facilities granted to the Frankel group of companies, including debt from other types of credit facilities which were not the subject matter of the charges.[72] However, the DJ agreed with the Prosecution that, in the absence of direct evidence on the actual repayment of the loans, the next best alternative was the proofs of debt filed by the banks against Ho and the Frankel group of companies at the bankruptcy and liquidation proceedings, in so far as these led to a reduction of the losses incurred by the banks based on the quanta as stated in the charges (*ie*, in

69 GD at [165].

70 GD at [165].

71 GD at [143].

72 GD at [144].

the case of VTB). Where the proofs of debt were larger than the total amount as stated in the charges (*ie*, in the case of OCBC and BEA), the proofs of debt were not taken into consideration. The DJ also noted that any repayments of the loans by Ho was not restitution which evidenced his remorse. Rather, repayment was a necessary part of Ho's scheme to continue to cheat the banks.[73]

(g) Taking into account the proofs of debt in relation to VTB and the total amount cheated, the DJ found that the total losses suffered by the banks and Wirana in Ho's case was $12,166,981 while the total losses suffered by the banks in Yeo's case was $1,843,145.[74]

(h) In arriving at the individual sentences for the cheating charges to be imposed on Ho and Yeo, the DJ considered various sentencing precedents. Given that Yeo's culpability was lower than Ho's, the DJ pegged Yeo's sentences for his cheating charges at two-third of Ho's and imposed the following individual sentences on Ho and Yeo based on the quantum involved in each cheating charge:[75]

Amount involved	**Sentence imposed on Ho**	**Sentence imposed on Yeo**
Below $100,000	One year's imprisonment	Eight months' imprisonment
Between $100,000 and $200,000	Two years' imprisonment	16 months' imprisonment
Above $200,000	Three years' imprisonment	Not applicable

73 GD at [167].

74 GD at [166] to [171].

75 GD at [172] to [176].

(i) In relation to the Appellants' charges under s 477A of the 1985 PC, the DJ disagreed with the Prosecution's submission that a sentence of 12 months' imprisonment should be imposed for each charge. The Prosecution's position was premised on the fact that the charges under s 477A of the 1985 PC were meant to facilitate the commission of the cheating offences. However, the DJ found that the harm caused by the falsification of a document with intent to defraud a larger sum would be higher than the harm caused by the falsification of a document with intent to defraud a lower sum. Given that the quantum stated in the falsified documents in the charges under s 477A of the 1985 PC closely mirrored that in the cheating charges, for Ho, the DJ pegged the sentences for his charges under s 477A of the 1985 PC to two-third of the sentence of his cheating charges as he was abetting Yeo in the commission of these offences. For Yeo, the DJ imposed the same sentences for his charges under s 477A of the 1985 PC as that for his cheating charges, since he was the primary offender for the former set of charges while he was abetting Ho in the latter set of charges. Hence, for the charges under s 477A of the 1985 PC, the DJ imposed the following individual sentences on Ho and Yeo based on the quantum involved in the corresponding cheating charges:[76]

Amount involved in corresponding cheating charge	**Sentence imposed on Ho**	**Sentence imposed on Yeo**
Below $100,000	Eight months' imprisonment	Eight months' imprisonment
Between $100,000 and $200,000	16 months' imprisonment	16 months' imprisonment

[76] GD at [177] to [179].

(j) In relation to Ho's total sentence, the DJ considered the sentencing precedents. In deciding that eight of Ho's individual sentences ought to run consecutively (with the remaining individual sentences ordered to run concurrently), the DJ considered the following: (i) the number of instances where Ho had cheated the banks and Wirana made him a persistent offender; (ii) there was a pressing need to discourage and deter trade financing fraud against banks and financial institutions; (iii) there were multiple victims in this case (*ie*, the three banks and Wirana); and (iv) the significant amount of cumulative losses constituted a particular aggravating feature in the present case. Given the presence of these factors, the DJ found that a total sentence of 15 years' imprisonment was appropriate, with the following eight individual sentences ordered to run consecutively:

Charge (Victim)	**Individual sentence imposed on Ho**
DAC-012400-2013 (Wirana)	Three years' imprisonment
DAC-012407-2013 (OCBC)	Two years' imprisonment
DAC-012411-2013 (VTB)	One year's imprisonment
DAC-012414-2013 (VTB)	Two years' imprisonment
DAC-012458-2013 (VTB)	One year's imprisonment
DAC-012476-2013 (Wirana)	Three years' imprisonment
DAC-012480-2013 (OCBC)	One year's imprisonment
DAC-012513-2013 (BEA)	Two years' imprisonment

(k) In relation to Yeo's total sentence, the DJ similarly considered the sentencing precedents as well as the aggravating factors which warranted an order that more than two sentences ought to run

consecutively. The DJ found that a total sentence of 40 months' imprisonment was appropriate, with the following three individual sentences ordered to run consecutively:

Charge (Victim)	Individual sentence imposed on Ho
DAC-012598-2013 (OCBC)	16 months' imprisonment
DAC-012644-2013 (VTB)	Eight months' imprisonment
DAC-012667-2013 (BEA)	16 months' imprisonment

(l) The DJ considered the totality principle and found that the total sentences imposed on Ho and Yeo were appropriate and were not crushing.[77]

Parties' cases on appeal

46 I next briefly summarise the parties' cases on appeal.

The Appellants' case

47 In relation to the Financing After Registration Charges, the Appellants submit the following:

(a) First, they point to the financing facilities with the three banks which show that the banks only generally had a floating charge over the assets of the Frankel group of companies as security. According to the Appellants, the DJ misapprehended and misunderstood the nature of the floating charges which the banks had.

[77] GD at [190] to [191].

(b) Second, the Appellants state that the banks did not require, as part of its conditions for its invoice financing facilities, the submission of delivery notes in order for financing to be disbursed by the banks to the suppliers. Given that they never required the delivery notes to be submitted, it follows that there could have been no reliance by the banks on the delivery notes or the dates stated on the delivery notes.

(c) Third, the Appellants state that the DJ erred in finding that the dates indicated on the sales invoices and delivery notes amounted to factual misrepresentations that the cars had been supplied on the dates stated on the sales invoices *and* the delivery notes. According to the Appellants, the dates indicated on the sales invoices and delivery notes only represented that the cars listed in the documents had been sold and delivered by one of the companies managed by Yeo to one of the companies in the Frankel group of companies by those dates. There were, however, no representations that the cars were sold and delivered on the dates set out in the sales invoices and delivery notes. Neither were there representations that the cars had not already been sold and delivered to end buyers.

(d) Fourth, the Appellants argue that the DJ erred in placing full weight on Yeo's CAD Statements.

(e) Fifth, the Appellants argue that the Prosecution's case in relation to the Financing After Registration Charges had shifted midway through the trial.

48 In relation to the Double Financing Charges, the Appellants submit that the DJ erred in failing to accept that the instances where financing was obtained

from more than one bank for the same cars arose out of mistakes caused by Yeo's negligence and Ho's reliance on his employees.

49 In relation to the Wirana Charges, Ho submits that the DJ erred in accepting the evidence of the witnesses from Wirana. Ho argues on appeal that the DJ ought to have found that the arrangement between Wirana and Frankel Motor, which Wirana was aware of, was that of an unsecured moneylending arrangement.

50 In relation to their appeals against sentence, the Appellants submit that the sentences imposed by the DJ on Ho and Yeo are manifestly excessive. In particular, they submit the following:

(a) The DJ failed to consider the mitigating circumstances which featured in the present case as well as the respective roles of Ho and Yeo.

(b) The DJ erred in his assessment of the harm suffered by the banks, given his reliance on the proofs of debt filed by the banks to calculate the losses of the banks.

(c) The DJ failed to consider relevant sentencing precedents in deciding the appropriate individual sentences for Ho and Yeo.

(d) The DJ erred in ordering eight individual sentences to run consecutively in the case of Ho and three individual sentences to run consecutively in the case of Yeo.

The Prosecution's case

51 The Prosecution submits that the DJ did not err in his decision to convict the Appellants of the Financing After Registration Charges and the Double Financing Charge as well as to convict Ho of the Wirana Charges.

(a) In relation to the Financing After Registration Charges, the Prosecution contends that the DJ was correct to find that the sales invoices and delivery notes showing later dates were meant to deceive the banks as to when the cars were in fact delivered, because the banks required the cars to form part of the security for the invoice financing loans. The DJ also correctly concluded that the differences in the dates meant that the transactions underlying the invoice financing applications were not genuine. Finally, the DJ was correct to find that the banks had, in fact, relied on the sales invoices and delivery notes in deciding whether to approve the invoice financing applications.

(b) In relation to the Double Financing Charges, the Prosecution contends that the DJ did not err in rejecting the Appellants' claim that the instances in which financing had been obtained for the same cars from more than one bank were due to mistakes or negligence. According to the Prosecution, the DJ had good basis not to accept this claim.

(c) In relation to the Wirana Charges, the Prosecution submits that the DJ did not err in accepting the testimony of the witnesses from Wirana.

52 Further, the Prosecution submits that the individual sentences and total sentences imposed on Ho and Yeo are not manifestly excessive. In particular, the Prosecution submits the following:

(a) The DJ carefully considered the culpability of Ho and Yeo and properly differentiated them based on their respective culpability.

(b) In assessing the loss caused to the banks, the DJ was justified in considering the proof of debts filed by the banks, given the lack of evidence on the repayment by the Frankel group of companies of the invoice financing loans which had been extended.

(c) The DJ had carefully considered the aggregate sentence to be imposed on Ho and Yeo in accordance with the sentencing precedents. The DJ had also considered the number of individual sentences which ought to be ordered to run consecutively. The Prosecution submits that the DJ had not erred in this regard.

Issues to be determined

53 These are the issues to be determined on appeal:

(a) first, whether the DJ erred in finding that the Prosecution had proven its case beyond a reasonable doubt in relation to the Financing After Registration Charges against the Appellants;

(b) second, whether the DJ erred in finding that the Prosecution had proven its case beyond a reasonable doubt in relation to the Double Financing Charges against the Appellants;

(c) third, whether the DJ erred in finding that the Prosecution had proven its case beyond a reasonable doubt in relation to the Wirana Charges against Ho; and

(d) fourth, on the footing that the Appellants are unsuccessful in their appeals against conviction, whether the individual sentences and

total sentence imposed by the DJ on each of the Appellants are manifestly excessive.

My decision

The DJ did not err in finding that the Prosecution had proven the Financing After Registration Charges against the Appellants beyond a reasonable doubt

54 I first consider the Appellants' submissions on appeal in relation to the Financing After Registration Charges.

The Appellants' arguments in relation to the type of security which the banks had as part of the financing facilities is without merit

55 On appeal, the Appellants have placed significant emphasis on the type of security which the banks had as part of the financing facilities. In particular, the Appellants highlight that the invoice financing facilities of the banks were secured by, *inter alia*, floating charges. The Appellants argue that the DJ erred in convicting the Appellants of the Financing After Registration Charges as he had misapprehended and misunderstood how floating charges operate in law and in commerce.[78] Particularly, the DJ purportedly erred in failing to appreciate that when a company granted a floating charge, it was charging its beneficial interests, and not its legal title, in the assets if the charge crystallises.[79]

56 Having considered the Appellants' arguments, I disagree with the Appellant's contention that the DJ had erred in his understanding of the floating charges which the banks had over the assets of the Frankel group of companies. It is undisputed that, based on the invoice financing facilities of the banks, the

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78 Appellants' Submissions dated 17 November 2023 ("AS") at para 42.

79 AS at para 120.

type of charge which the banks had over the assets of the various companies in the Frankel group of companies was generally a floating charge over all of the beneficially owned assets of the Frankel group of companies. Notably, the financing facilities of the banks also made clear that the banks expected the financed cars to form part of the security for the invoice financing. I also accept the Appellants' detailed submissions to make its case that floating charges are ambulatory in nature, *ie*, until and unless a floating charge crystallises due to an event of default, the Frankel group of companies could deal with its beneficially owned assets, even those financed by the banks, in any way they commercially required, which included the sale of the cars.

57 The present case, however, is different. This is not a case where a company in the Frankel group of companies had applied for invoice financing, obtained approval which resulted in the bank extending financing, and *then* sold the cars to end buyers and had the cars registered in the end buyers' names. Rather, the present case involves transactions where the cars had already been sold to and registered in the end buyers' names *before* the sales invoices and delivery notes were issued by one of the companies which Yeo managed and the relevant company in the Frankel group of companies submitted an invoice financing application. In my view, this is the key point which the Appellants have failed to appreciate even at this appeal. There would have been nothing wrong if the cars had been sold to the end buyers and registered in their names *after* financing had been obtained. However, by having already sold the cars to, and registering them in the names of, the end buyers *before* submitting the applications for financing to the banks, the banks were deprived of their expected security for the loans at the outset. This feature of the transactions, together with the fact that the sales invoices and delivery notes conveyed the impression that the cars were sold and delivered on the dates set out in the invoices and delivery notes but did not communicate the fact that the cars had

already been sold to and registered in the end buyers' names, resulted in Ho's conduct amounting to a deception on the banks.

The fact that the banks did not require delivery notes to be submitted as part of financing applications did not prevent the banks from relying on the delivery notes if submitted

58 Next, the Appellants argue that the banks did not require, as part of their conditions for the invoice financing facilities, the submission of delivery notes in order for financing to be disbursed by the banks to the suppliers.[80] According to the Appellants, given that they never required the delivery notes to be submitted, it follows that there could have been no reliance by the banks on the delivery notes or the dates stated on the delivery notes.[81]

59 In my view, while this appears to be an attractive argument at first blush, it is ultimately flawed. I accept that the conditions attached to the invoice financing facilities of the banks never required the submission of delivery notes. This much was clear from the face of the documents and could not reasonably be disputed by the Prosecution. However, the fact that the banks did not require delivery notes to be submitted as part of invoice financing applications did not necessarily mean that the banks were unable to rely on delivery notes or the contents of such delivery notes if such documents were submitted by the company seeking financing. In particular, if the Frankel group of companies chose to submit additional documents beyond what was necessary when applying for invoice financing, it was entirely open to the banks to consider these documents, rely on the contents of these documents and assess whether invoice financing should be extended to the company on the basis of *all* the

80 AS at paras 111 to 113.

81 AS at paras 114 to 117.

documents which were submitted by the company. The Appellants have not provided a legal basis to support their position that the lack of a requirement for such documents to be submitted is fatal to the banks' reliance on such documents if submitted.

60 In particular, in the present case, the delivery notes were submitted alongside sales invoices, with the latter required as part of invoice financing applications. When reviewing the sales invoices, it was entirely reasonable for the banks to consider the delivery notes which were voluntarily included alongside the sales invoices. Further, given that the dates indicated on each set of invoice and delivery note were typically the same (see [19] above for an example of a typical invoice and delivery note which bore the same date), this made the dates indicated on each set of invoice and delivery note all the more significant. I next consider the significance of the dates which were indicated on the sales invoices and delivery notes.

The dates which were indicated on the sales invoices and delivery notes did amount to false representations

61 The Appellants argue that the dates indicated on the sales invoices and delivery notes only represented that the cars listed in the documents had been sold and delivered by one of the companies managed by Yeo to one of the companies in the Frankel group of companies by those dates. According to the Appellants, the documents did not represent that: (a) the cars were sold and delivered on the dates set out in the sales invoices and delivery notes; and (b) the relevant company in the Frankel group of companies had not already sold and delivered the cars to end buyers.[82]

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82 AS at para 19.

62 I am unable to agree with this argument. While the documents may not have gone as far as to explicitly state that the cars listed in a particular sales invoice and delivery note were sold on the date stated on the two documents, I do not think this necessarily leads to the conclusion that the date was altogether irrelevant and did not amount to any representation. Here, it is important to remember that the date listed on each set of sales invoice and delivery note was typically the same – this necessarily conveyed the impression that the cars had been supplied on the date stated on the sales invoice *and* the delivery note as argued by the Prosecution.[83] In conveying this impression, the sales invoice and delivery note necessarily concealed the fact that relevant company in the Frankel group of companies had already sold and delivered the cars listed in each sales invoice and delivery note to the end buyers.

63 In fact, the bank officers had testified at trial that the banks would not have approved the applications and extended financing if they had known that the sales invoice and delivery note dates did not reflect the true dates on which the cars were supplied, and that the cars had already been registered to their end buyers when financing was applied for. In my view, this is clear evidence that the banks had, in fact, relied upon the date stated in each sales invoice and delivery note in deciding to approve the financing applications by the relevant company in the Frankel group of companies. This is also supported by the fact that, based on the financing facilities documents of the banks, the banks clearly were interested in ensuring that there were genuine transactions involving the sale of cars and that the invoice financing extended by the banks was secured by at least a floating charge over the assets, which included the cars (see [56] above).

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[83] Prosecution's Submissions dated 22 November 2023 ("PS") at para 95.

The DJ correctly considered and placed full weight on Yeo's CAD Statements

64 Next, I am of the view that the DJ correctly considered and placed full weight on Yeo's statements, which contained admissions relating to both the Financing After Registration Charges and the Double Financing Charges.

65 Unlike what the Appellants contend, I agree with the DJ that Yeo had sufficient command of the English language, was able to understand the questions asked in Yeo's CAD Statements and was able to give detailed and proper responses to the questions.[84]

66 Further, as the Prosecution correctly highlights on appeal, Yeo's CAD Statements were detailed and involved Yeo reviewing numerous documents relating to the transactions. Yeo did not face any difficulty in reviewing these documents and providing his input on each of the transactions as set out in the annexes to his statements. As the Prosecution recognises, Yeo was also in a position to comment on which transactions he was *unable* to comment on due to his lack of knowledge, such as the transactions involving Wirana since this did not involve the companies which he managed.[85]

67 Finally, as the Prosecution has set out in detail in its submissions, Yeo's disputes over the contents of his statements were contradicted by the evidence and lacked a sound basis.[86] In this regard, I fully agree with the Prosecution.

68 For the reasons above, I find that the DJ was correct to place full weight on Yeo's CAD Statements. The admissions in Yeo's CAD Statements further

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84 GD at [113] to [114].

85 PS at para 57(c).

86 PS at paras 60 to 62.

supported the DJ's finding that the Financing After Registration Charges were made out against the Appellants, given Yeo's detailed admissions that the sales invoices and delivery notes were prepared by Yeo on Ho's instructions so as to enable him to submit invoice financing applications to the banks. Given the state of the evidence, I am of the view that the DJ did not err in any way in finding that the Prosecution had proven the Financing After Registration Charges against the Appellants beyond a reasonable doubt.

The Prosecution's case did not change midway through the trial

69 Finally, I briefly address the Appellants' contention that the Prosecution's case against the Appellants for the Financing After Registration Charges changed midway through the trial. According to the Appellants, the Prosecution had initially based its case that the banks were deceived on the grounds that the banks' securities, in the form of pledges, fixed charges (or even ownership) of the cars they were financing, were impaired because the cars had already been sold to and registered in the end buyers' names when the applications were made. However, when faced with the reality that the banks' securities were only in the form of floating charges rather than fixed charges, the Prosecution purportedly shifted its case and argued that the banks were deceived by the incorrect dates on the delivery notes.[87]

70 I disagree with the Appellants' contention. In my view, the Prosecution's case did not shift midway through the trial. Rather, its case was always that the dates indicated on the invoices and delivery notes were false since the cars were actually delivered on or prior to the dates on which the cars were registered in the end buyers' names. The banks relied on the false

87 AS at paras 88 to 101.

representations (*ie*, the false dates) in the invoices and delivery notes and were induced to approve the applications and extend financing. The banks thus did not have the security over the cars they financed at the outset, even though they expected to have such security. In my view, as the Prosecution contends,[88] the Appellants have misapprehended the Prosecution's case and have therefore erred in stating that the Prosecution's case had shifted.

The DJ did not err in finding that the Prosecution had proven the Double Financing Charges against the Appellants beyond a reasonable doubt

71 I next consider the Appellants' submissions on appeal in relation to the Double Financing Charges.

72 The Appellants first highlight that the Double Financing Charges were errors which represent only a small proportion of the total number of invoices which were issued by the companies managed by Yeo to the Frankel group of companies. According to the Appellants, the margin of error is so small that it cannot be used as a basis to suggest that Ho or Yeo had a dishonest intention to cheat the banks.[89]

73 Having considered this argument, I do not see how this takes the Appellants' case very far. While I appreciate that the number of instances where financing was obtained from more than one bank for the same car was limited, this does not necessarily support the conclusion that the Appellants bore no criminal intent and that this was just a result of negligence on the part of Yeo. Neither is the fact that there was "no method, structure or design"[90] to the

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88 PS at paras 110 to 115.

89 AS at paras 172 to 174.

90 AS at para 175.

instances which gave rise to the Double Financing Charges a basis to conclude that there was no criminal intent on Yeo's part or Ho's part.

74 The Appellants also argue that it made no sense for Yeo to seek a second payment for cars which he had already received payment for when he could have easily issued sales invoices for cars which had been sold to the Frankel group of companies and registered in the end buyers' names but which he had not received payment for.[91] Again, I do not see how this argument takes the Appellants' case far. The evidence which was adduced in the court below, and which was made patently clear in Yeo's CAD Statements, was that there were moneys which were due to Yeo but which had not been paid. The Appellants accept this on appeal as well.[92] If the parties chose to address this debt in the manner which was done, it is not for this court or the trial court below to question whether there was an alternative way for Yeo to obtain payments which were overdue. The fact that they used a method which may not appear to be the most sensible way of obtaining payments did not necessarily mean that these were mistakes which arose out of the negligence of Yeo.

75 The real question in my view is whether the evidence which was adduced in the court below supports the finding which the DJ made, *viz*, that these were deliberate attempts to cheat the banks. In my view, the evidence clearly supported the DJ's finding. I set out below the key pieces of evidence which, in my view, show that the instances where financing was obtained more than once from different banks were deliberate attempts to cheat the banks rather than mistakes arising out of Yeo's negligence:

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91 AS at para 183.

92 AS at para 182.

(a) First, as the DJ had found, these were transactions involving large sums, or "big ticket items" in the words of the DJ.[93] The DJ took the view that it would have been simple to remove a car from the list of cars eligible for financing if a financing application had already been submitted in relation to that car. In my view, the evidence clearly supports the finding that Yeo did, in fact, have a clear system in place to record the cars which had been purchased by the Frankel group of companies which had been registered by Yeo in the end buyers' names. As the Prosecution highlights in its submissions, Yeo described that he had such a system in place which allowed him to know which cars he had the right to issue invoices for.[94] I must add that Yeo clearly *had to have* such a system in place. Given the nature of the dealings between the Frankel group of companies and the companies which Yeo managed, the cars which were imported by Yeo into Singapore were physically delivered *directly* to the premises of the Frankel group of companies upon arrival in Singapore. Therefore, for Yeo to be able to track the cars which were purchased and sold by the Frankel group of companies to end buyers, such a system was necessary.

(b) Second, unlike what the Appellants contend on appeal to support their submission that Yeo had acted negligently in relation to the Double Financing Charges, Yeo was clearly a prudent businessman. Throughout their submissions, the Appellants have sought to frame Yeo as, *inter alia*, "an under-educated, simple … and unintelligent, underwhelming yet honest and hardworking personality who was content to do a

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93 GD at [125].

94 PS at paras 104 to 106; ROA at p 4323: NE for 28 February 2020 at p 104, lines 2 to 21.

tremendous amount of tedious work".[95] In my view, this is not an accurate characterisation of Yeo. In this regard, I agree with the Prosecution that the evidence demonstrates that Yeo was a prudent businessman who tracked the cars he was selling and who kept a proper documentary record of the cars.[96] His manner of conducting business betrayed the Appellants' narrative that he was negligent.

(c) Third, as was noted by the DJ, the brazenness which was evident in one of the occasions where financing was obtained multiple times from different institutions using a set of three cars (see GD at [126]–[127] which has been summarised at [42(c)] above) pointed very strongly towards a deliberate scheme to cheat the institutions, rather than innocent mistakes arising out of negligence.

(d) Fourth, there were the admissions in Yeo's CAD Statements. In making the argument that Ho had relied on his employees who were negligent in failing to realise that invoices had been issued for the same cars more than once and that Yeo was negligent in issuing such invoices, the Appellants failed to consider an important piece of evidence – Yeo's CAD Statements. While the Appellants state in their submissions that Yeo had not even realised that "there were double financing issues until the CAD brought it to his attention in 2012 … some 5 years after the events",[97] as the Prosecution correctly highlights, Yeo had admitted in his earlier statements (along with the annexes to these statements) that *it was Ho who had instructed him* to issue the respective invoices though

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95 AS at para 181.

96 PS at para 106; ROA at pp 4360 to 4361: NE for 2 March 2020 at p 25, line 14 to p 26, line 1.

97 AS at para 188,

> these were cars which had already been delivered earlier.[98] From a perusal of Yeo's CAD Statements, it is clear that Yeo's admissions before 2012 covered the Double Financing Charges even if his attention had not been brought to the specific fact at that time that financing had already been obtained for these cars before the sales invoices and delivery notes were issued. In this regard, as I had set out above (at [64]–[68]), I agreed with the DJ's decision to accord full weight to Yeo's CAD Statements. His reasons for the purported inaccuracies in his statements were unconvincing and the DJ had carefully considered these contentions in assessing the weight to be placed on Yeo's CAD Statements.

76 Given the above, I did not accept the Appellants' arguments on appeal that the Double Financing Charges were a result of Yeo's negligence and the failure of Ho's employees to realise Yeo's mistakes. In my view, the evidence clearly supported the DJ's finding that the Double Financing Charges were simply part of another method employed by Ho to deceive the banks and obtain financing to pay outstanding amounts owed to Yeo. To achieve this, he enlisted the help of Yeo to issue the necessary sales invoices and delivery notes. The DJ, therefore, did not err in convicting the Appellants of the Double Financing Charges.

The DJ did not err in finding that the Prosecution had proven the Wirana Charges against Ho beyond a reasonable doubt

77 I next consider Ho's submissions on appeal in relation to the Wirana Charges.

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98 PS at para 108.

The DJ did not err in finding that Ho's claim of a disguised unsecured moneylending arrangement was a bare assertion

78 I first consider Ho's claim that the arrangement between Wirana and Frankel Motor was an unsecured moneylending arrangement which was disguised as a sale of cars from Ping Ying to Wirana before being on-sold to Frankel Motor. According to Ho, Wirana was aware that the transactions between Ping Ying and Wirana as well as Wirana and Frankel Motor were not genuine transactions. Rather, Wirana was simply extending unsecured working capital loans carrying a 3% per month interest.

79 Ho argues that there were two factors which ought to have led the DJ to conclude that Wirana was aware that the transactions involving the sale of cars were not genuine but were rather part of an unsecured moneylending arrangement. I disagree. I set out below the key factors identified by Ho and why I disagree with his submissions:

(a) First, Ho states that, even though Wirana was paying significant sums to Ping Ying for the purchase of cars, Wirana was apparently not concerned with checking if Ping Ying was in the business of selling cars or if the cars which were being sold even existed.[99] I do not find this to be an accurate characterisation of the evidence which emerged in the court below. As I will explain below (at [83]), the evidence adduced showed that Wirana (through Raj and Rakesh) was concerned about the cars sold by Ping Ying to Wirana and did check on the cars on various occasions.

[99] See, for example, AS at para 276.

(b) Second, Ho states that the features of the arrangement between Frankel Motor and Wirana would lead a "reasonably intelligent bystander" to conclude that the Wirana transactions were in fact sham paper transactions and not genuine financing transactions involving the sale of cars. I consider two key features which Ho emphasises in his submissions.

(i) The first feature is that Wirana enjoyed a profit in the form of interest of 3% for the first 60 days and an additional 3% interest for every 30 days thereafter until Frankel Motor paid Wirana's invoices. According to Ho, this necessarily pointed towards a finding that the arrangement between Wirana and Frankel Motor was one where Wirana was lending money at an interest rate of 3% for the first 60 days and an additional 3% thereafter for every 30 days the loan repayment was outstanding.[100] On this point, while I agree that the payment terms were atypical, I am of the view that this does not mean that Wirana was aware that the transactions involving the sale of cars were not genuine but were rather part of an unsecured moneylending arrangement.

(ii) The second feature is that, unlike banks which had extended invoice financing to the Frankel group of companies, Wirana did not once demand any evidence from Ping Ying that it had, in fact, imported the cars into Singapore. Neither was Wirana concerned with the chassis numbers of the cars imported. This pointed to the sale of cars not being genuine.[101] In my view,

100 AS at para 261.

101 AS at paras 262 to 263.

> while Wirana may not have conducted itself in the same manner as banks and financial institutions may have, this does not shed light on whether Wirana was, in fact, aware that the arrangement between Wirana and Frankel Motor did not involve transactions relating to the sale of cars.

80 Next, Ho points to the JVA related to an entity known as Royal Automobile Pte Ltd.[102] According to Ho, while one of the conditions precedent made reference to the sale of motor vehicles by Wirana to Frankel Motor totalling $16,285,000,[103] this was in fact the unsecured loan which Wirana had extended to Frankel Motor. Further, Ho points to the fact that, as seen in the JVA, the sum of $16,285,000 which Frankel Motor owed to Wirana was "transformed and redesignated" in the JVA to form part of the $20 million interest bearing loan which Rakesh had extended to Royal Automobile Pte Ltd.[104] In my view, the JVA does not point towards a finding that the arrangement between Wirana and Frankel Motor was an unsecured moneylending arrangement which both parties were aware of. While the debt owed by Frankel Motor to Wirana may have transformed under the JVA, the JVA did not in any way point towards a finding that the nature of the relationship between Frankel Motor and Wirana before the JVA was one involving unsecured moneylending transactions. Rather, on the face of the JVA, reference was made specifically to *the sale of motor vehicles by Wirana to Frankel Motor*.[105] Therefore, I am unable to agree with Ho in this regard.

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102 Exhibit 1D26 at Clause 2.3.

103 GD at [130(i)].

104 AS at para 282.

105 Exhibit 1D26 at Clause 2.3.

81 Further, Ho points to the fact that he had consistently stated, even in his statements to the CAD, that the transactions between Wirana and Frankel Motor were paper transactions used to disguise a loan from Wirana.[106] In my view, while he may have consistently stated that the transactions between Wirana and Frankel Motor were paper transactions, this did not move his assertion beyond a bare one.

82 Ultimately, Ho has not pointed to any evidence to support his bare assertion that Wirana was aware that the transactions involving the sale of cars were not genuine. While the terms of the financing arrangement between Wirana and Frankel Motor may have been unlike the financing arrangements which the Frankel group of companies had with the various banks, this did not mean that the arrangement between Wirana and Frankel Motor was, in the eyes of both parties, a disguised unsecured moneylending arrangement. Given the lack of evidence to support Ho's claim as well as the DJ's finding that Ho was not a credible witness, I find that the DJ did not err in rejecting Ho's claim that the transactions in the Wirana Charges were disguised unsecured moneylending transactions.

The DJ correctly found that the evidence showed that Wirana believed the arrangement between Frankel Motor and Wirana to be one involving the sale of cars

83 Having reviewed the evidence as well as the parties' submissions, I am of the view that the DJ correctly found that the evidence showed that Wirana believed the arrangement between Frankel Motor and Wirana to be one involving the sale of cars. I set out the key evidence which supports this finding:

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106 AS at paras 245 to 255.

(a) First, Rakesh's testimony was that he believed that the arrangement between Frankel Motor and Wirana involved the onward selling of cars by Wirana to Frankel Motor after Wirana had purchased the cars from Ping Ying. According to Rakesh, this was a continuation of Frankel Motor's previous arrangement with an entity called Wirana Pte Ltd.[107] Rakesh also stated that he had instructed his assistant, Raj, to check on the cars at Frankel Motor[108] which suggested that Rakesh did believe that there were cars being sold as part of the arrangement between Frankel Motor and Wirana. Further, Rakesh himself visited Frankel Motor when payments were overdue and asked about the whereabouts of the cars.[109]

(b) Second, Rakesh's testimony that he had visited Frankel Motor when repayments were overdue and asked about the whereabouts of the cars was corroborated by the evidence of Ho's partner, Jemme. Jemme similarly stated that Rakesh visited Frankel Motor to ask for his cars when payments were overdue as he had wanted to repossess the cars.[110]

(c) Third, Raj's testimony was that he believed that the arrangement between Frankel Motor and Wirana involved the onward selling of cars by Wirana to Frankel Motor after Wirana had purchased the cars from Ping Ying. He similarly stated that he had checked on the cars at Frankel Motor.[111] When he could not find the cars, Raj testified that Rakesh

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107 ROA at pp 2382 to 2383 and 2349: NE for 9 April 2019 at pp 21 to 22 and 78.

108 ROA at p 2458: NE for 10 April 2019 at p 8.

109 ROA at p 2457: NE for 10 April 2019 at p 7, lines 6 to 24.

110 ROA at p 1769: NE for 21 September 2018 at p 29, line 32.

111 ROA at pp 1897 and 1902: NE for 11 March 2019 at pp 28 and 33.

instructed him to look for the cars.[112] This again pointed towards a belief that there were cars being sold as part of the arrangement between Frankel Motor and Wirana.

(d) Fourth, the evidence of Rakesh and Raj were supported by the documents which showed that cars were being sold by Ping Ying to Wirana before being sold by Wirana to Frankel Motor. In this regard, I agree with the Prosecution's submission that there is nothing on the face of the documents which suggests that there were no cars underlying the transactions.[113]

The sentences imposed by the DJ on the Appellants are not manifestly excessive

84 Given my finding that the DJ did not err in convicting both the Appellants of the Financing After Registration Charges and the Double Financing Charges and did not err in convicting Ho of the Wirana Charges, I next consider whether the sentences imposed by the DJ on the Appellants are manifestly excessive.

The DJ did have regard to the relevant aggravating and mitigating factors

85 First, I do not agree with the Appellants that the DJ did not have regard to the relevant mitigating factors. In my view, the DJ considered the arguments raised by both the Prosecution and the Appellants in the court below and correctly assessed the factors which featured based on the evidence.

86 In particular, I do not agree with the Appellants on the following points:

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112 ROA at p 2046: NE for 12 March 2019 at p 79.

113 PS at para 122.

(a) The Appellants argue that the offences were not highly planned nor premeditated. In particular, Ho claims that he was simply performing his tasks routinely, believing that the business processes in the Frankel group of companies were not in contravention of the law.[114] I am unable to accept this submission. Given the DJ's decision to place full weight on Yeo's CAD Statements which I agree with, the evidence clearly shows that the offences by Ho were planned and premeditated. Further, Ho's claim that he believed that his business processes were not in contravention of the law was betrayed by the fact that he deliberately asked Ho to issue sales invoices and delivery notes on particular dates so as to facilitate financing applications to the banks.

(b) The Appellants argue that the offences were not committed for personal profit or gain.[115] However, this ignores that there was direct and indirect financial gain enjoyed by both the Appellants. In the case of Ho, the extending of financing by the banks and Wirana allowed the Frankel group of companies to continue operating and this would have allowed Ho to continue receiving his remuneration as the director of the companies. In the case of Yeo, Yeo's invoices (which had otherwise been unpaid) were paid as a result of the banks extending financing.

(c) Further, the Appellants argue that the banks did not suffer losses as a direct result of the offences but as a result of the eventual winding up of the Frankel group of companies which was caused by VTB pulling its facilities for an unrelated reason.[116] In my view, this is a speculative

114 AS at para 294.

115 AS at para 295.

116 AS at para 296.

argument. Further, there was still the losses suffered by Wirana which had to be considered in the case of Ho.

(d) The Appellants also state that there was no attempt to evade detection. I disagree. The entire scheme perpetrated against the banks was done on the basis of sales invoices and delivery notes which bore false dates. This was clearly done to avoid detection of the fact that financing was sought when the cars had already been sold to and registered in the end buyers' names.

87 Finally, the Appellants argue that some weight ought to be placed on account of the delay in investigations and prosecution of the Appellants' offences.[117] In my view, there was little evidence adduced in the court below to substantiate this claim. In the absence of clear evidence pointing towards an inordinate delay, I am unable to agree with the Appellants' submission.

The DJ made no error in disregarding the precedent of So Seow Tiong *which the Appellants rely on at the appeal*

88 Next, in their submissions against the DJ's decision on sentence, the Appellants have relied heavily on the District Court precedent of *So Seow Tiong*.[118] At the hearing on 29 November 2023, I emphasised to the Appellants that little weight ought to be placed on *So Seow Tiong* given that it was not binding on this court.[119] Further, as the DJ correctly observed, the High Court had stated in *Sindok Trading* (at [29]) that the laying down of sentencing benchmarks should generally be left to the appellate court. Given that the

117 AS at paras 299 and 341.

118 See AS at paras 319 to 329.

119 NE for 29 November 2023 at p 39, lines 18 to 19.

District Court in *So Seow Tiong* had arrived at the sentences it imposed based on an application of a sentencing framework which it had developed on its own which is not binding on any court, I am of the view that the DJ was correct not to consider *So Seow Tiong* in determining the appropriate sentences to be imposed for Ho's charges and Yeo's charges.

The DJ correctly considered the relevant sentencing precedents in arriving at the individual sentences for Ho's charges and Yeo's charges

89 Having reviewed the manner in which the DJ arrived at the individual sentences for Ho's charges and Yeo's charges, I am unable to agree with the Appellants that the DJ erred in any way. In my view, the DJ's GD makes patently clear that the DJ considered the culpability of Ho and Yeo, the harm caused by their offences as well as relevant sentencing precedents in arriving at the individual sentences. Further, the DJ also considered, where appropriate, the factors which differentiated the precedents from the present case. In my view, the DJ had explained clearly and comprehensively in the GD the manner in which he arrived at the individual sentences which were imposed for Ho's charges and Yeo's charges. I fully agree with his reasoning and see no reason to disturb his decision on the individual sentences.

The DJ did not err in ordering for eight individual sentences to run consecutively in the case of Ho

90 Next, I do not find that the DJ erred in ordering for eight individual sentences to run consecutively in the case of Ho. As was made clear in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 (at [80]), there may be a need to order more than two individual sentences to run consecutively where the overall criminality of the offender's conduct simply cannot be encompassed in two consecutive sentences. In *ADF v Public Prosecutor* [2010] 1 SLR 874 (at [146]), the court considered the circumstances

in which more than two individual sentences may be ordered to run consecutively:

(a) where the offender is a persistent or habitual offender;

(b) where there is a pressing public interest concern in discouraging the type of criminal conduct being punished;

(c) where there are multiple victims; and

(d) where other peculiar cumulative aggravating features are present.

91 In the present case, the DJ was correct to find that *all* the circumstances above featured in the present case. First, the sheer number of instances where Ho had cheated the banks and Wirana undeniably made him a persistent offender. Second, given that Ho's offences involved deception against banks and, in particular, trade financing fraud, there was a clear public interest concern to discourage such offences. Third, there were multiple victims in the case, *ie*, the three banks and Wirana. Fourth, there were significant losses which were caused to the banks and Wirana. While I accept that the exact losses caused to the banks could not be determined, it was clear that the losses were significant. The overall criminality of Ho therefore warranted more than two individual sentences to be run consecutively. In my view, the DJ's order for eight individual sentences to run consecutively was appropriate.

The DJ did not err in ordering for three individual sentences to run consecutively in the case of Yeo

92 Similarly, I do not find that the DJ erred in ordering for three individual sentences to run consecutively in the case of Yeo. As the Prosecution contends,

the four circumstances which warranted the ordering of multiple individual sentences to run consecutively in Ho's case applied in Yeo's case as well. However, given Yeo's fewer charges and the fact that the amount of loss attributable to him was lower, the DJ fairly ordered only three individual sentences to run consecutively. I do not find that the DJ erred in this regard.

The total sentences imposed on Ho and Yeo cannot be said to be manifestly excessive

93 In view of the above and having considered the total sentences of 15 years' imprisonment imposed on Ho and 40 months' imprisonment on Yeo, I do not find that the sentences are manifestly excessive. The sentences imposed are appropriate in view of the overall criminality of Ho and Yeo and were consistent with the sentencing precedents considered by the DJ in the court below.

Conclusion

94 For the reasons above, I do not find that the DJ had erred in convicting the Appellants of the charges. Neither did the DJ err in his assessment of the appropriate individual sentences to be imposed for each of the Appellants' charges as well as the aggregate sentence imposed for each of the Appellants. In my view, the sentences cannot be said to be manifestly excessive. Therefore, I dismiss the Appellants' appeals against conviction and sentence.

Vincent Hoong
Judge of the High Court

Chelva Retnam Rajah SC (Tan Rajah & Cheah) (instructed), Letchamanan Devadason and Ivan Lee Tze Chuen (LegalStandard LLP) for the appellants;
and
Hon Yi (Attorney-General's Chambers) for the respondent.