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

[2025] SGHC 2

Magistrate's Appeal No 9038 of 2024/01

Between

Tan Hui Meng

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9038 of 2024/02

Between

Public Prosecutor

… *Appellant*

And

Tan Hui Meng

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Statutory offences — Residential Property Act (Cap 274, 1985 Rev Ed)]

[Criminal Law — Statutory offences — Penal Code (Cap 224, 2008 Rev Ed) — Provision of false evidence in judicial proceedings]
[Criminal Procedure and Sentencing — Sentencing — Appeals]

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29 October, 8 November 2024

8 January 2025

Kannan Ramesh JAD:

Introduction

1 Tan Hui Meng ("Mr Tan") faced three charges relating to the wrongful purchase of restricted residential property on behalf of a foreign national Zhan Guotuan ("Mr Zhan"), in breach of s 23(1)(*a*) of the Residential Property Act (Cap 274, 1985 Rev Ed) ("RPA"). Mr Tan also faced five other charges relating to making false declarations and providing false evidence in judicial proceedings. In the proceedings below, Mr Tan was convicted on all eight charges and sentenced to imprisonment for a collective term of two years, three months and three weeks, with a fine of $3,000 (in default 14 days' imprisonment).

2 Mr Tan initially appealed against conviction and sentence. He subsequently withdrew his appeal against sentence and pursued only his appeal

against conviction. The Public Prosecutor ("Prosecution") appealed against sentence. Mr Tan's and the Prosecution's appeals shall be collectively referred to as the "appeals". The Prosecution's appeal related principally to the sentence for the charge relating to provision of false evidence in judicial proceedings. On 8 November 2024, I dismissed Mr Tan's appeal and allowed the Prosecution's appeal, enhancing Mr Tan's sentence to imprisonment with the result that the collective term of imprisonment was increased to four years, three months and three weeks (with the $3,000 fine remaining untouched). I delivered brief oral grounds for my judgment then. These are the full grounds of my decision.

Facts

The parties

3 Mr Tan is a 55-year-old male Singaporean citizen. He is a certified public accountant and works as an auditor, accountant and corporate secretary. Mr Zhan is a national of the People's Republic of China. In 2003 or 2004, Mr Zhan obtained Permanent Residency in Singapore under the Economic Development Board's global investor programme. Mr Tan and Mr Zhan were introduced sometime in 2003 by a mutual friend and Mr Zhan requested Mr Tan's assistance with making investments in Singapore.

4 Four other parties were relevant to the appeals. The first two (collectively, the "Guans") were Guan Wenhai ("GWH"), an employee of Mr Zhan's company Xin An Technology Group Pte Ltd ("Xin An") at the material time (see [5] below), and his wife Guan Aimei ("GAM"), who was neither an employee of Mr Zhan nor his companies. The Guans were previously nationals of the People's Republic of China and were granted Singapore citizenship in or around 2003. The third and fourth parties were Zhan Penglong ("ZPL") and Zhan Pengxiang ("ZPX"). They are Mr Zhan's son and nephew, respectively.

ZPX and ZPL obtained Singapore citizenship in 2012 and 2013 respectively, after completing their National Service obligations.

5 Three corporate entities were also relevant. First, Xin An, which was incorporated on 8 January 2004 with Mr Tan's assistance. Xin An's total share capital of about $4.5m was paid equally by Mr Zhan and his two brothers. Second, Alphaland International Pte Ltd ("Alphaland"), which was incorporated on 27 April 2005. Mr Zhan was the sole shareholder of Alphaland. Mr Tan was secretary of both Xin An and Alphaland; he was also responsible for their operational and financial affairs as Mr Zhan was based overseas. Third, Hwampoa Pte Ltd ("Hwampoa"), which was incorporated by Mr Tan on 23 July 2007. Mr Tan and GAM were the sole shareholders of Hwampoa, each holding one share of $1.

Background to the dispute

6 Central to the appeals were the purchases of three terrace houses located at 10J East Coast Road ("10J"), 10P East Coast Road ("10P") and 10M East Coast Road ("10M") (collectively, the "Properties"). It was undisputed that the Properties did not qualify as non-restricted residential property *per* ss 2, 4(1) and 4(2) of the RPA and that Mr Zhan, being a "foreign national" *per* s 2 of the RPA, was prohibited from purchasing them.

Facts relating to the First to Third Charges

7 The Properties were purchased between 2007 and 2008. 10J was purchased in GAM's name on 15 June 2007, 10P in Mr Tan's name on 29 May 2007 and 10M in Hwampoa's name on 9 January 2008. Between 2012 and 2013, 10J and 10M were conveyed to ZPX and 10P was conveyed to ZPL.

8 Mr Tan's position in the proceedings below was that the Properties were purchased on his behalf and that he was their beneficial owner. The Prosecution's position was that Mr Tan was behind a scheme to purchase the Properties in the names of others on trust for Mr Zhan. Mr Tan was charged in relation to the purchase of each of the three Properties under s 23(1)(*a*) of the RPA (collectively, the "RPA Charges").

Facts relating to the Fourth, Sixth and Eighth Charges

9 Mr Tan also faced three charges concerning the Guans' effort in 2010 to purchase a Housing and Development Board ("HDB") flat at The Pinnacle @ Duxton (the "Duxton Flat"). As GAM was the registered owner of 10J at that time, she was informed by the HDB that she was ineligible to purchase the Duxton Flat. To circumvent this, the Guans sought Mr Tan's assistance. His conduct in this regard formed the subject of the Fourth, Sixth and Eighth charges.

10 The following events are pertinent:

(a) On 19 January 2010, Mr Tan and GAM affirmed a joint statutory declaration to the effect that Mr Tan was the beneficial owner of 10J, and that GAM was holding the property on trust for him (the "19 January Declaration"). Annexed to the 19 January Declaration was a trust deed dated 15 June 2007, which also stated that 10J was held by GAM on trust for Mr Tan (the "15 June Trust Deed"). As will become clear later, the assertion of a trust in both documents was false. The purpose of the documents was to persuade the HDB to permit the Guans to purchase the Duxton Flat. The 19 January Declaration was the subject of the Fourth Charge under s 14(1)(*a*) of the Oaths and Declarations Act 2000 (Cap 211, 2001 Rev Ed) ("ODA").

(b) Mr Tan and GAM met with a representative of the HDB on 3 March 2010 (the "3 March Meeting"). Mr Tan informed the HDB that he had financed the purchase of 10J and that GAM had no beneficial interest in the property. The 19 January Declaration and 15 June Trust Deed were submitted in support of this assertion. On 9 March 2010, the HDB rejected the 19 January Declaration as proof of ownership. These events formed the basis of the Eighth Charge, in which the Prosecution alleged that Mr Tan abetted by engaging in a conspiracy with GAM to make a false statement to the HDB, pursuant to which the 19 January Declaration and 15 June Trust Deed were submitted to the HDB. This was a breach of Section 60(*a*) of the Housing and Development Act (Cap 129, 2004 Rev Ed).

(c) On 11 June 2010, Mr Tan and GAM met a solicitor, Ms Gwendoline Ong Tin Si ("Ms Ong"). Mr Tan presented the 15 June Trust Deed to Ms Ong for the purpose of procuring a transfer of 10J to his name. Relying on the deed, Ms Ong certified as true a land transfer instrument bearing No. IB/820200N, which stated Mr Tan as the beneficial owner of 10J (the "11 June Land Transfer Instrument"). These events formed the basis of the Sixth Charge against Mr Tan, for abetting by instigating Ms Ong to falsely certify the 11 June Land Transfer Instrument as correct, in breach of s 59(6) of the Land Titles Act (Cap 157, 2004 Rev Ed).

11 The Fourth, Sixth and Eighth Charges shall be collectively referred to as the "Duxton Flat Charges".

Facts relating to the Fifth and Seventh Charges

12 The Fifth and Seventh Charges (collectively the "10J Suit Charges") related to Suit No 806 of 2013, a suit commenced in September 2013 by Mr Tan against GAM in the High Court (the "10J Suit"). In the 10J Suit, Mr Tan claimed a sum of $2.3m being the proceeds from the subsequent conveyance of 10J, on the basis that he was the true owner of the 10J Property, and that GAM held the property and the proceeds on trust for him. At the trial of the 10J Suit, Mr Tan testified that he was the beneficial owner of 10J and adduced the 19 January Declaration and the 15 June Trust Deed in evidence in support.

13 The Fifth Charge was for adducing the 19 January Declaration (which annexed the 15 June Trust Deed) as a true document in judicial proceedings, an offence under s 14(1)(*b*) of the ODA. The Seventh Charge was brought against Mr Tan on this basis, that Mr Tan had intentionally given false evidence in judicial proceedings, in breach of s 193 of the Penal Code (Cap 224, 2008 Rev Ed) ("PC").

14 In the proceedings below and on appeal, Mr Tan's defence to the Duxton Flat Charges and the 10J Suit Charges was that he was the beneficial owner of 10J. As such, the declarations made, and the evidence adduced in the 10J Suit were not false. It was readily apparent that the key factual inquiry underlying all eight charges (the "Charges"), was whether the Properties were in fact purchased on behalf of Mr Tan or Mr Zhan.

Decision below

15 The District Judge's ("DJ") grounds are found at *Public Prosecutor v Tan Hui Meng* [2024] SGDC 146 ("GD"). I briefly summarise the DJ's reasons in so far as they are relevant to the issues in the appeals.

16 The DJ found that the Properties were purchased on behalf of Mr Zhan and convicted Mr Tan accordingly. She relied on three key strands of evidence: (a) the flow of funds in relation to the acquisition and disposal of the Properties; (b) documentary evidence of ownership of the Properties; and (c) the evidence of the Guans and Mr Zhan. In relation to Mr Zhan's evidence, the DJ admitted two statements taken from Mr Zhan by the Commercial Affairs Department (the "CAD" and "Mr Zhan's statements") on the basis of the hearsay exception in s 32(1)(*j*)(iii) of the Evidence Act 1893 ("EA").

17 As regards sentence, the DJ ordered the sentence for the Second, Fourth and Seventh Charges to run consecutively as each charge represented a separate group of offending conduct. The individual sentences for these offences were respectively three months, three weeks and two years. The fine of $3,000 was in relation to the Sixth Charge.

18 Dissatisfied, Mr Tan appealed against conviction while the Prosecution appealed against the sentence imposed in respect of the Seventh Charge.

19 I address the DJ's analysis on conviction and sentence when I consider Mr Tan's and the Prosecution's appeals.

The appeals

Mr Tan's case

20 Mr Tan appealed against his conviction on three grounds. First, Mr Zhan's statements should not have been admitted pursuant to s 32(1)(*j*)(iii) of the EA as the Prosecution had not taken sufficient steps to secure Mr Zhan's attendance at trial. Second, the DJ ought to have rejected GWH's evidence as it was inconsistent in several respects. Third, the evidence did not sufficiently

demonstrate that the Properties were purchased on Mr Zhan's behalf. As regards sentence, Mr Tan submitted that the two-year imprisonment term imposed in respect of the Seventh Charge was fair and proportionate.

The Prosecution's case

21 As regards conviction, the Prosecution maintained that the Properties had been purchased on Mr Zhan's behalf. The financial and documentary evidence clearly bore this out and Mr Tan was unable to satisfactorily explain otherwise. Mr Zhan's statements were correctly admitted pursuant to the hearsay exception in s 32(1)(*j*)(iii) of the EA as reasonable effort had been made to secure his attendance at trial. Where GWH's evidence was concerned, the inconsistencies highlighted by Mr Tan related to facts which were either undisputed or entirely irrelevant to the Charges in question.

22 The Prosecution appealed against the two-year imprisonment term imposed in respect of the Seventh Charge on the basis that it was manifestly inadequate. In gist, the Prosecution submitted that the DJ had failed to appreciate the numerous aggravating factors and had erred in calibrating the sentence in relation to the relevant precedents. At the hearing of the appeals, and in response to questions from the Court, the Prosecution initially sought an uplift of the sentence to an imprisonment term of between three to four years. When pressed by the Court to explain its position, the Prosecution's position changed several times before it eventually settled on a four-year term.

Issues that were determined

23 Four issues arose for my determination:

(a) Were Mr Zhan's statements correctly admitted?

(b) Did the inconsistencies in GWH's evidence materially impact his credibility?

(c) Did the evidence demonstrate, beyond a reasonable doubt, that the Properties were purchased on Mr Zhan's behalf?

(d) Was the sentence imposed in respect of the Seventh Charge manifestly inadequate?

Issue 1: Whether Mr Zhan's statements were correctly admitted

24 Mr Zhan was not a witness in the proceedings below. It was apparent that his evidence was important on the key factual issue, the source of his evidence being his two statements. It was also not disputed that Mr Zhan's Statements were hearsay evidence. The question was whether they were nonetheless admissible under s 32(1)(*j*)(iii) of the EA. Mr Zhan's statements would have been properly admitted under s 32(1)(*j*)(iii) of the EA if it was shown that: (a) Mr Zhan was outside of Singapore; and (b) it was not practicable to secure his attendance at trial: *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 ("*Gimpex*") at [98]–[99].

25 Mr Tan only disputed that the second limb of the *Gimpex* test was not fulfilled, *ie*, that the Prosecution had not sufficiently demonstrated that it was impracticable to secure Mr Zhan's attendance at trial. In this context, the burden is on the Prosecution to prove unavailability beyond a mere assertion of the same: *Gimpex* at [97]; *Yong Khong Yoong Mark and others v Ting Choon Meng and another* [2021] SGHC 246 at [176]; *Lavrentiadis, Lavrentios v Dextra Partners Pte Ltd and another* [2020] SGHC 146 at [116]. The Prosecution must demonstrate that all reasonable steps were taken to persuade Mr Zhan to testify:

Pacific Marine & Shipbuilding Pte Ltd v Xin Ming Hua Pte Ltd [2014] SGHC 102 at [42].

26 It was undisputed that Mr Zhan was out of Singapore as proceedings below were ongoing. Mr Zhan was charged as co-accused to Mr Tan in 2017. He later applied successfully in May 2017 to leave jurisdiction for a one-week business trip to Jakarta. It turned out that Mr Zhan would instead travel to China and that he would not return for the next few years, including when proceedings below were ongoing.

27 I was satisfied that it was impracticable to have expected Mr Zhan's attendance in proceedings below. When Mr Zhan initially failed to return to Singapore in May 2017, his counsel informed the court that he was being treated for severe depression in a psychiatric ward in Fuzhou, China. Between 2017 and 2022, Mr Zhan's counsel provided at least 20 medical reports stating that he was unfit to attend court. The last report was dated 15 April 2022 and stated that Mr Zhan was unfit to attend court up till 6 August 2022. The issue of admissibility of Mr Zhan's statements was considered by the DJ at least a month prior to this date, on 4 July 2022.

28 Further, and as proceedings below were ongoing, Mr Zhan's own criminal proceedings remained at the pre-trial conference stage as a result of his consistent non-attendance. In the circumstances, it would have been impracticable to expect his attendance at Mr Tan's trial.

29 I was also satisfied that the CAD had taken sufficient reasonable steps in attempt to secure Mr Zhan's attendance at trial:

(a) CAD Investigation Officer Mr Darren Ng ("IO Darren Ng") had written to the Chinese authorities via Interpol to confirm the veracity of

Mr Zhan's medical reports, but he did not receive a response. In *Public Prosecutor v Shanmuga Nathan Balakrishnan* [2016] SGHC 95 ("*Shanmuga*") and *Public Prosecutor v Teo Chu Ha @ Henry Teo and another* [2021] SGDC 196 ("*Henry Teo*"), the Central Narcotics Bureau and Corrupt Practices Investigation Bureau similarly reached out to their foreign counterparts to locate trial witnesses, albeit unsuccessfully. The court was nevertheless satisfied that a reasonable effort had been made to secure the witnesses' attendance at trial and the respective statements were admitted pursuant to the hearsay exception in s 32(1)(*j*)(iii) of the EA (*Shanmuga* at [9]; *Henry Teo* at [66]–[67]). I therefore did not accept Mr Tan's assertion that the CAD should have gone further to follow up with Interpol to verify the source of the foreign medical reports.

(b) I also noted that IO Darren Ng had sought secondary medical opinions from consultants in Singapore on Mr Zhan's medical condition as stated in his reports. IO Darren Ng sought the opinion of consultant psychiatrist Dr Bryan Yeo ("Dr Yeo") and senior consultant of the Institute of Mental Health, Dr Christopher Cheok ("Dr Cheok"). Based on Mr Zhan's reported condition, both Dr Yeo and Dr Cheok agreed that Mr Zhan would be unfit to attend court. The last report provided by Dr Cheok stated that Mr Zhan would be unfit to attend court until November 2021.

(c) I also rejected Mr Tan's argument that the DJ should have considered the possibility of receiving Mr Zhan's evidence via video link. He relied on *Wan Lai Ting v Kea Kah Kim* [2014] 4 SLR 795 ("*Wan Lai Ting*"), which in my view was distinguishable. In that case, a plaintiff applied for two affidavits sworn by her elderly mother to be admitted pursuant to s 32(1)(*j*) of the EA, on the basis that her mother

> was of frail health and thus unfit to testify. The mother, who was resident in Hong Kong, suffered two strokes about a year prior to trial, had mild to moderate cognitive impairment with poor memory and slurring of speech, and required a wheelchair to move around due to physical ailments including asthma and lower back pain (at [8]). The court was satisfied that the mother's physical ailments rendered it impracticable for her to travel to Singapore and attend court in person. However, her health was not in such dire state that she could not give evidence via video link (at [17]). Compared to the ailments considered in *Wan Lai Ting*, I considered Mr Zhan's medical condition to be far more severe. His medical reports recorded that Mr Zhan's "thinking, emotions, responses, conduct and behaviour [were] still abnormal" as a result of his severe mental disorders, which included depression and bipolar disorder. In my view, Mr Zhan's mental afflictions were such that he would have been precluded from testifying, both in person and remotely.

30 In light of the above, I was satisfied that Mr Zhan's statements were correctly admitted pursuant to the hearsay exception in s 32(1)(*j*)(iii) of the EA.

31 There was a remaining issue. Section 32(3) of the EA states that a statement which is *prima facie* admissible, might nevertheless be disregarded if it would not be in the interests of justice to treat it as relevant. As Mr Zhan's evidence was critical to his conviction, Mr Tan argued that he would be unfairly prejudiced by the inability to test this evidence in cross examination.

32 I was unable to accept this argument. A court should only exercise its discretion to exclude an otherwise admissible statement where there are "countervailing factors [which] outweigh the benefit of having the evidence admitted": *Gimpex* at [105]. While the inability to cross-examine the maker of

a hearsay statement may occasion some prejudice, it is certainly not an automatic bar to the admissibility of that statement: *Public Prosecutor v Yap Yan Seng* [2024] SGDC 200 ("*Yap Yan Seng*") at [29]. Indeed, this is an inevitable consequence of admitting hearsay evidence, and to consider it determinative would render s 32(3) of the EA otiose and redundant: *Jiangsu New Huaming International Trading Co Ltd v PT Musim Mas and another* [2024] SGHC 81 at [56]; *Yap Yan Seng* at [29]. The principle undergirding the s 32(1)(*j*)(iii) exception, is that the relevant statement is nevertheless the *best available* evidence to the court in the face of the statement maker's unavailability or inability to testify: *Gimpex* at [96]. I also did not consider that there was anything suspect in the manner in which Mr Zhan's statements were recorded that gave rise to any concern of prejudice. In this light, I declined to exercise my discretion under s 32(3) of the EA to exclude Mr Zhan's statements from consideration.

33 Lastly, a court shall assign such weight to statements admitted under s 32(1) of the EA as it regards as appropriate: s 32(5) EA. Mr Tan suggested that doubt should have been cast on the correctness of Mr Zhan's statements in light of his mental afflictions. However, Mr Zhan's medical reports only documented his mental condition from 19 May 2017 onwards. Of the two statements recorded from Mr Zhan, only the second was reasonably proximate in time to this date; it was recorded a week prior on 11 May 2017. However, there was no suggestion in any of the reports that Mr Zhan's mental condition preceded 19 May 2017. In fact, Mr Zhan's medical report dated 24 May 2017 stated that he had suffered from an "acute" relapse of severe depression, which suggested that condition manifested itself on or shortly before 24 May 2017, which was consistent with the diagnosis made on 19 May 2017. In the circumstances, there was simply no basis to conclude that Mr Zhan's state of mind was impacted when his second statement was recorded on 11 May 2017.

I thus considered Mr Tan's argument to be unpersuasive as regards Mr Zhan's second statement and certainly not relevant as regards the first. In any event, and as I will elaborate on later, I agreed with the DJ that Mr Zhan's statements were internally and externally consistent with other contemporaneous evidence. They were thus correctly accorded full weight.

Issue 2: Whether the inconsistencies in GWH's evidence materially impact his credibility

34 Mr Tan highlighted four inconsistencies in GWH's evidence relating to: (a) the order in which the Properties were purchased; (b) the order in which Mr Zhan's other redevelopment projects had been carried out; (c) the bank account to which a specific payment for the Properties had been made; and (d) the time and manner in which Mr Zhan had discovered that the Properties were purchased.

35 I first set out the legal principles applicable to assessing witness credibility. It is trite that a witness's credibility is not immediately undermined by minor inconsistencies in his evidence: *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 at [25]. A flawed witness is not always an untruthful one and innocent discrepancies must be distinguished from deliberate lies: *Govindaraj Perulmalsamy and others v Public Prosecutor and other appeals* [2004] SGHC 16 at [30]. The question for the court is thus whether the totality of the evidence suggests that the witnesses' evidence, in respect of material elements of the charge, is untrue or unreliable: *Tay Wee Kiat and another v Public Prosecutor and another appeal* [2018] 4 SLR 1315 ("*Tay Wee Kiat*") at [21]. In *Tay Wee Kiat*, minor inconsistencies in a witness's testimony were considered understandable given that the relevant events occurred some four years prior to trial (at [32], [44]).

36 The inconsistencies highlighted by Mr Tan go towards his conviction on the RPA Charges. The question was thus whether the inconsistencies in GWH's evidence had a bearing on any material element of the RPA Charges.

37 Section 23(1)(*a*) of the RPA, as it was in force at the material times, reads as follows:

> **Residential property not to be purchased or acquired by a citizen or an approved purchaser as a nominee of a foreign person**
>
> 23.—(1) No —
>
> (a) citizen or approved purchaser shall purchase or acquire any estate or interest in any residential property that is not non-restricted residential property as a nominee of any foreign person with the intention that the citizen or approved purchaser shall hold it in trust for that foreign person; …

38 I accepted the Prosecution's submission that there are four material elements to an offence under s 23(1)(*a*) of the RPA. First, the accused person must be a Singaporean citizen or an approved purchaser. Second, the accused person must have purchased /acquired an interest in any residential property that is not non-restricted residential property. Third, the interest must have been purchased or acquired on behalf of a foreigner. Fourth, the accused must have intended to hold the interest on trust for the foreigner.

39 As it was undisputed that Mr Tan was a Singaporean citizen and the Properties were not non-restricted residential property, I considered whether the inconsistencies in GWH's evidence had bearing on the *third* and *fourth* elements of this offence.

40 In relation to the first three inconsistencies highlighted by Mr Tan at [34(a)–(c)] above, I considered those facts to be irrelevant to the RPA Charges. Importantly, those facts were not contested by parties in the proceedings below.

I was mindful that GWH was testifying to events which had occurred at least ten years prior to trial. In this light and guided by the principles set out in *Tay Wee Kiat*, I was satisfied that these minor inconsistencies might be a result of human fallibility in recollection rather than any effort to obfuscate the truth.

41 In relation to the inconsistency stated at [34(d)], GWH testified that Mr Zhan had learnt about the purchases after they were "already done", sometime in August or September of 2007. Mr Tan highlighted that the 10M purchase was only completed in January 2008 and thus argued that GWH's testimony contradicted objective evidence relating to 10M's completion.

42 I disagreed with Mr Tan that GWH's evidence was inconsistent in this respect. First, and although the 10M purchase was *completed* in January 2008, purchase efforts would necessarily have been prior. The Prosecution stated that efforts to purchase 10M began as early as July 2007. When GWH stated that Mr Zhan had learnt of the purchases after they were "already done", this did not immediately mean that the purchases had been completed by then. GWH's evidence was thus not inconsistent. Second, GWH's testimony was consistent with Mr Zhan's evidence, that he had discovered that the Properties had been purchased only after that had happened. Third, and in any event, I did not consider this alleged inconsistency to have a bearing on any material element of the s 23(1)(*a*) offence. I further noted that Mr Tan's own evidence on Mr Zhan's discovery of the Properties, has been materially inconsistent between the 10J Suit and in proceedings below (see [54] below).

43 I was therefore of the view that inconsistencies in GWH's evidence did not materially impact his credibility. To the contrary, I found GWH's overall testimony to be consistent with the financial and documentary evidence adduced in proceedings below. I turn to this financial and documentary evidence next.

Issue 3: Whether the evidence demonstrated that the Properties were intended to be held in trust for Mr Zhan

44 There was an abundance of financial and documentary evidence which pointed to Mr Zhan being the beneficial owner of the Properties. Instead of addressing this evidence, Mr Tan chose to focus his attention on certain narrow facts in an effort to demonstrate that the Properties were purchased on his own behalf. Thus, he largely left this evidence untouched and did not attempt to explain it away satisfactorily. This was telling.

45 I begin with the evidence relating to the funds that were used to purchase the Properties. It was not disputed that a substantial portion of the funds used to purchase the Properties between 2007 and 2008 were from Mr Zhan's companies, *ie*, Xin An and Alphaland. It was also not disputed that the Properties were subsequently between 2012 and 2013 conveyed to Mr Zhan's son and nephew, ZPL and ZPX, and that the "proceeds" were returned to Mr Zhan (or his companies).

46 Mr Tan's explanation was not credible: he claimed that the funds were from Xin An and Alphaland because Mr Zhan had extended a personal loan to him to purchase the Properties. The loan agreement was verbal and the loan was interest-free, non-tenured and unsecured, and made from a current account that Mr Tan had with Xin An and Alphaland. According to Mr Tan, it was regular practice for him to take loans from or make advance payments to Mr Zhan's companies.

47 However, there was no evidence whatsoever of this purported loan. Importantly, there was no evidence of the alleged current account adduced from the records of the relevant companies. In the proceedings below, Mr Tan adduced a one-page summary of the alleged current account which he had

prepared *ex post facto* ("CA Summary"). However, the CA Summary was an unverified and unaudited document and there were no documents adduced that supported the entries therein. In any event, the CA Summary did not reflect the alleged loan agreement. At the hearing of these appeals, Mr Tan's counsel pointed me to certain entries in the books of the companies where loans had been recorded as being made to a company belonging to Mr Tan. However, there was no evidence that these entries related to the specific loan that was the alleged source of funds for the purchase of the Properties.

48 In fact, Xin An and Alphaland's books clearly recorded outgoing payments being made to purchase the Properties. For example, in relation to the 10P purchase, outgoing payments of $170,000 and $800,000 were recorded in Alphaland and Xin An's respective books as being for "*10P*" and "*10P-Cash*". In relation to the 10J purchase, outgoing payments totalling over $800,000 were recorded in Xin An's books as "*Cash (1% 10J)*", "*9% 10J*" and "*10J SDS$41,560 … + 10j comp$630,896.19*". Further, and as highlighted by the DJ, there was evidence that Alphaland's manager had given personal instructions relating to payment for the 10P purchase. All of this was consistent with the purchases having been made on behalf of Mr Zhan and not Mr Tan.

49 Further, when the Properties were subsequently conveyed to Mr Zhan's son (ZPL) and nephew (ZPX) between 2012 and 2013, the "proceeds" of these purported sales were eventually returned to Mr Zhan (or his companies). Mr Tan took the position that he was properly entitled to all "proceeds" from these conveyances as the beneficial owner of the Properties. He explained that although the monies were returned to Mr Zhan and his companies, (a) the proceeds from the 10J and 10M sales were owed to him as a debt, and (b) the proceeds from the 10P sale formed Mr Tan's investment in a redevelopment project with Mr Zhan.

50 Mr Tan's position, that these proceeds of sale were a debt owed by Mr Zhan to him and an investment in redevelopment projects with Mr Zhan, was unsupported by any contemporaneous evidence. The CA Summary itself stated that Mr Zhan owed him about $2.8m to date. If this was true, it was difficult to understand why Mr Tan would agree to make further investments with or further loans to Mr Zhan. Instead, I agreed with the DJ that the transactions were orchestrated by Mr Tan so as to legitimise the purported sale and purchase of the Properties when they were in fact intended to be returned to ZPL and ZPX.

51 Further, there were four documents which spoke to the ownership of the Properties (the "Four Trust Documents"). In relation to 10P, a memorandum of understanding dated 21 May 2008 was signed by Mr Zhan as Principal and by Mr Tan as Property Trustee/Bank Loan Guarantor ("10P Trust Memorandum"). The Memorandum stated, as translated from Mandarin Chinese to English, that:

> The principal or his successor owns the interest in the above property.
>
> The principal agrees to bear all relevant fees and responsibilities that have arisen or may arise from the property trustee and bank loan guarantor in relation to the said property.

52 A similar memorandum was executed on 21 May 2008 in respect of 10J. This memorandum was signed by Mr Zhan as Principal, by Mr Tan as Bank Loan Guarantor and by GAM as Property Trustee ("10J Trust Memorandum"). The content of the 10J Trust Memorandum was identical to that reproduced at [51] above.

53 There were two further documents executed in respect of 10M. These documents declared that Mr Tan and GAM held their share in Hwampoa on Mr Zhan's behalf ("10M Trust Deeds"). The 10M Trust Deeds were signed by Mr

Zhan and Mr Tan/GAM respectively. Given that 10M was purchased in Hwampoa's name and the sole shareholders on record were Mr Tan and GAM, this effectively meant that Mr Zhan was the beneficial owner of 10M.

54 Mr Tan's account of the Four Trust Documents was neither believable nor supported by a plain reading of the documents. In the proceedings below, Mr Tan did not initially appear to contend with the veracity or accuracy of these documents. Instead, he objected to their admissibility. It was only in re-examination that Mr Tan stated, for the first time, that the 10J and 10P Trust Memoranda were prepared so that Mr Zhan could obtain funding for a potential joint venture project. This explanation was in turn inconsistent with Mr Tan's testimony in the 10J Suit, where he stated that the 10J Trust Memorandum was prepared to record his sale of the Property to Mr Zhan, pending approval of sale by the Controller of Residential Property. Even on this basis, it was unbelievable that a trust document would have been drawn up prior to receipt of said approval, or that a trust memorandum was the appropriate instrument to record an agreement of this nature. It would have been far more appropriate to enter into a conditional sale and purchase agreement. In this regard, it should be noted that there was no purchase price stated in Four Trust Documents.

55 In light of the financial and documentary evidence canvassed above, I was satisfied that the Properties were purchased on behalf of for Mr Zhan. The RPA Charges, the Duxton Flat Charges and the 10J Suit Charges were thus all made out beyond reasonable doubt. Nevertheless, and for completeness, I turn to address each specific instance of evidence highlighted by Mr Tan in his appeal.

56 First, Mr Tan highlighted that in Mr Zhan's statements to the CAD, he had stated that he had no knowledge that the Properties had been purchased on

his behalf until well after the fact. Upon realising that the Properties had been purchased under GAM and Mr Tan's names, Mr Zhan was angry and demanded assurances from Mr Tan. According to Mr Tan, this militated against a finding that the Properties were purchased on Mr Zhan's behalf.

57 This argument was difficult to understand. As a preliminary point, this argument was made on the basis of evidence contained in Mr Zhan's statements, which Mr Tan challenged on appeal on the basis of admissibility and accuracy. It is thus difficult to see on what evidential basis Mr Tan could run the argument. Even if this was put to one side, Mr Zhan's knowledge (or lack thereof) was immaterial to the offence under s 23(1)(*a*) of the RPA. It certainly was not Mr Tan's position that he had misappropriated Mr Zhan's monies to purchase the Properties, or that the Properties were purchased against Mr Zhan's wishes. Instead, the purchases were a result of the free rein Mr Tan and GWH were given by Mr Zhan to manage Xin An and Alphaland's affairs. Pursuant thereto, the Properties were purchased using funds from Mr Zhan's companies. It was Mr Tan's knowledge and intention in purchasing the Properties which were material. In this situation, Mr Tan intended to and did indeed purchase the Properties, not for himself, but for Mr Zhan. Indeed, Mr Zhan's subsequent conduct was consistent with Mr Zhan regarding the Properties as purchased on trust for him. He demanded assurances from Mr Tan that the Properties were his. He requested the Four Trust Documents to be drawn up to record his ownership of the Properties and for Properties to be conveyed to his son and nephew. It was therefore difficult to understand how the fact that Mr Zhan had belatedly learnt about the purchase of the Properties, was at all relevant.

58 Second, Mr Tan submitted that he had used personal funds towards the purchase of the Properties. He had also stood as loan guarantor for multiple transactions, thus exposing himself to personal liability. Mr Tan would not have

done this if the purchases was not made on his behalf. In my view, these factors did not weigh against the considerable financial and documentary evidence canvassed above, all of which pointed towards Mr Zhan being the beneficial owner of the Properties.

59 In any event, these factors were equivocal. First, Mr Tan testified to making regular advance payments on Xin An and Alphaland's behalf. It was uncertain whether the payments that he made towards the Properties were also advance payments. Second, Mr Tan testified that he was entitled to a 20% share of the net profits earned from Mr Zhan's redevelopment projects. This would have served as at least some impetus for him to expose himself to personal liability. Third, and in any event, it was difficult to see how this would be at all pertinent, given that the primary funds used to purchase the Properties were derived from Xin An and Alphaland. Mr Tan did not dispute this.

60 Third, Mr Tan emphasised that the nub of the First Charge was that he had intentionally aided GAM to purchase 10J on Mr Zhan's behalf. However, GAM could not have had the intention to hold 10J on trust for Mr Zhan as she was not aware that 10J had been purchased in her name. It followed that Mr Tan could not have intentionally aided GAM's commission of the offence.

61 I considered this argument to be misconceived. To intentionally aid, the abettor must have done something which aided the commission of the primary offence; he must also have rendered the assistance intentionally and with knowledge of the circumstances constituting the crime: *Public Prosecutor v Koh Peng Kiat* [2016] 1 SLR 753 ("*Koh Peng Kiat*") at [24]. All cases of abetment "require proof of an intention or knowledge on the part of the abettor that the offence will be committed *even if the main offence itself does not require it* [emphasis in original]": *Koh Peng Kiat* at [25]. In the circumstances, it is thus

clear that the relevant intention and knowledge, was that of *Mr Tan*, and not of GAM.

62 Finally, I rejected Mr Tan's argument that Mr Zhan would not have asked Mr Tan to prepare the Four Trust Documents because Mr Zhan would not have wanted to document their commission of the RPA offences.

63 As observed by the DJ, Mr Zhan appeared to be wholly unaware of the RPA prohibitions at the material times. A similar observation was made by the Judge in Suit No 781 of 2013, a separate suit commenced by GWH against Mr Tan concerning 10P (the "10P Suit"), Mr Zhan testified to being the beneficial owner of the 10P Property. Paragraph 4 of the Oral Judgment in the 10P Suit is pertinent:

> The only truthful witness was Zhan, and his evidence appeared to be given in blissful ignorance of the implications it held for him. Zhan openly admitted that he was the party who paid for the purchase of the Property by the Plaintiff in 2007.

64 For the reasons provided above, I found that the Properties were purchased on behalf of Mr Zhan. Having addressed Mr Tan's appeal against conviction, I turn to address the Prosecution's appeal against sentence.

Issue 4: Whether the two-year imprisonment term imposed in respect of the Seventh Charge was manifestly inadequate

65 The gravamen of the Seventh Charge was that Mr Tan had intentionally given false evidence in the 10J Suit. As stated at [12] above, the 10J Suit was commenced by Mr Tan against GAM. Mr Tan's case was that 10J was held by GAM on trust for him. ZPX had expressed interest in purchasing 10J from him sometime in September 2012 for $2.3m. Mr Tan agreed and the sale proceeds were paid to GAM as his trustee and nominee. However, despite numerous

demands, GAM refused to pay the $2.3m to Mr Tan. Mr Tan thus claimed the $2.3m from GAM. In support of his primary position that GAM held 10J on trust for him, Mr Tan annexed the 19 January Declaration and the 15 June Trust Deed to his Affidavit of Evidence-in-Chief. He also testified to this effect at trial, relying on the same documents. GAM denied Mr Tan's version of events. Instead, her position was that Mr Zhan was the beneficial owner of 10J.

66 In view of the DJ's findings, which I upheld on the appeal against conviction, Mr Tan's claim and version of events in the 10J Suit were substantially untrue. The 19 January Declaration and the 15 June Trust Deed were also false. Mr Tan had therefore committed an offence under s 193 of the PC, which reads as follows:

> **Punishment for false evidence**
>
> 193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment for a term which may extend to 7 years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment for a term which may extend to 3 years, and shall also be liable to fine.

67 The gravity of this offence is clear from the mandatory imprisonment term that it carries. Section 193 of the PC was enacted to deter any attempts by litigants to pervert the course of justice; indeed, the provision of false evidence in judicial proceedings undermines the very foundation of our justice system: *Rahman Pachan Pillai Prasana v Public Prosecutor* [2003] SGHC 52 ("*Rahman*") at [18]; *Public Prosecutor v Lim Seong Ong* [2021] SGDC 114 at [200]. The true victim of a s 193 offence is thus not any individual – it is instead the course of justice itself. Even if the provision of false evidence does not result in unfair gains or losses, it nevertheless thwarts the administration of justice:

Rahman at [19]. The provision of false evidence in judicial proceedings also has the potential to waste precious court time and resources: *Choo Pheng Soon v Public Prosecutor* [2001] 1 SLR(R) 115 ("*Choo Pheng Soon*") at [42]; *Rahman* at [24].

68 In *Rahman*, the accused was employed as secretary of one "M", who borrowed a sum of $410,000 from one "F". On M's instruction, F obtained a letter of surety for part of this loan from the accused. F eventually commenced a suit against M for non-payment of the $410,000. In the course of proceedings, the accused falsely testified that F had signed a letter promising that he would not use this letter of surety against M for the purpose of any claim ("Indemnity Letter"). The accused fabricated a false story in respect of the Indemnity Letter: she testified that she was alone with F when the Indemnity Letter was prepared and that she had personally witnessed F signing the Indemnity Letter. In upholding the two-year imprisonment term ordered against the accused at first instance, Yong Pung How CJ held at [24] that:

> … the [accused] had carefully set out to deceive the High Court with the fabricated evidence. Instead of expressing remorse, she went on to spin a web of deceit in the trial below, hence wasting precious court time. She clearly had no regard for the solemn nature of swearing an affidavit and for judicial proceedings in Singapore. …

69 In *Choo Pheng Soon*, the accused was sued by "L" for failing to make payment of a $22,000 debt. The accused fabricated an elaborate story that L was an illegal moneylender and that the sums were illegal loans made by L. The accused then forged written agreements and acknowledgments for payments of monies; he also forged L's signature on those documents and adduced them in court.

70 At first instance, the accused was sentenced to two years' imprisonment. He unsuccessfully appealed against sentence. In enhancing the sentence to imprisonment for a term of three and a half years, Yong Pung How CJ held at [41]–[42] that:

> The fabrication of evidence that occurred took a lot of careful planning, deliberate effort and skilled craftsmanship. To make matters worse, the appellant had, in trying to wriggle his way out of trouble, cast aspersions on a host of persons. He accused [L] of being an illegal moneylender. He accused Sgt Sabil of putting things into his police statement which he did not say. He accused Mr Ranjeet Singh as well as his own lawyer of preparing an affidavit which he did not affirm.
>
> To top it all off, the appellant remained unrepentant to the very end. Throughout the trial, he led the district court on a wild goose chase, with the result that much precious court time was wasted over the deliberation of wholly irrelevant matters, such as whether [L] was an illegal moneylender and whether the appellant's affidavit had been affirmed in his presence.

71 In *Rahman* and *Choo Pheng Soon*, the offenders produced false documents and made false statements to defend claims brought against them or their counterparts. I considered Mr Tan's culpability to be higher. He had actively commenced the 10J Suit in pursuit of an entirely fabricated claim. He then testified to a fictious account of events and adduced fabricated documents in support. This necessarily amounted to a more severe perversion of the course of justice than was contemplated in *Rahman* and *Choo Pheng Soon*. It was Mr Tan who had initiated the perversion of justice by bringing a false claim. It was his actions that resulted in the examining of an entirely baseless claim and the consequent wastage of judicial resources.

72 I also considered the quantum of damages sought by Mr Tan in the 10J Suit to be a relevant consideration. Mr Tan sought $2.3m from GAM – this was significantly higher than the $410,000 and $22,000 at stake in *Rahman* and *Choo Pheng Soon*, respectively. Had Mr Tan prevailed, GAM would have been

liable for this significant sum. At the hearing for the appeals, Mr Tan's counsel rightly conceded that the extent of potential loss to GAM was a relevant sentencing consideration. In addition, the $2.3m had in fact been returned to Mr Tan for the purpose of orchestrating the sham conveyance of 10P to ZPL. In other words, he had brought a claim for monies which he had already received, compounding his lies. I considered these factors to further aggravate Mr Tan's offending conduct.

73 I did not agree with the DJ's consideration of the fact that the false documents were not created for the specific purpose of the 10J Suit (GD at [213]). With respect, that misses the point. As explained at [71], Mr Tan's reliance on these false documents only formed part of his wrongful conduct. He had mounted a fabricated claim and provided a falsified narrative; these false documents were merely used in support. Mr Tan must have known, or at the very least expected, that GAM would assert that Mr Zhan was the beneficial owner of 10J. These false documents would then have become critical to the success of his claim. The key consideration is whether use of the documents was intended or reasonably anticipated. To this extent, I did not see any difference between a situation where the documents were created for a suit, and where they would necessarily be a key plank of the evidential matrix in the judicial proceedings.

74 For the reasons provided above, I considered Mr Tan's offending conduct to be more serious than that in *Rahman* and *Choo Pheng Soon*. A three-and-a-half-year imprisonment term was ordered in respect of the s 193 offence in *Choo Pheng Soon*. An uplift from that sentence was warranted. I accordingly sentenced Mr Tan to imprisonment for a term of four years, for his breach of s 193 of the PC.

75 For completeness, Mr Tan did not appeal against the DJ's approach of finding that one sentence in each category of offences was to run consecutively. I similarly did not consider this approach to be inappropriate. In the circumstances, I enhanced the global sentence to a term of imprisonment of four years, three months and three weeks, with a fine of $3,000 (in default 14 days' imprisonment).

Conclusion

76 For these reasons, I dismissed Mr Tan's appeal against conviction and allowed the Prosecution's appeal against sentence.

Kannan Ramesh
Judge of the Appellate Division

Kalidass s/o Murugaiyan and Koh Boon Yang (M/s Kalidass Law Corporation) for the Appellant in MA 1 and Respondent in MA 2;
Gordon Oh and Louis Ngia (Attorney-General's Chambers) for the Appellant in MA 2 and Respondent in MA 1.