

Public Prosecutor v Lim Ai Wah and Thomas Philip Doehrman
[2016] SGDC 249

Case Number : DAC 26699 & Ors of 2012

Decision Date : 09 September 2016

Tribunal/Court : District Court

Coram : Ng Peng Hong

Counsel Name(s) : Alan Loh, Asoka Markandu, Kelvin Kow and Grace Lim (Deputy Public Prosecutors) for the public prosecutor; Lai Yew Fei and Alec Tan (M/s Rajah & Tann LLP) for the first accused person. Julian Tay, Amelia Ang, Jonathan Cho and Daryl Goh (M/s Lee & Lee) for the second accused person.

Parties :

9 September 2016

District Judge Ng Peng Hong:

I. INTRODUCTION

1 This was a joint trial of 2 accused persons. The first accused person Lim Ai Wah ("**Lim**") claimed trial to a charge under s 477A read with s 109 of the *Penal Code* (Cap 224, 2008 Rev Ed) ("**PC**") as well as five charges under s 47(1)(b) of the *Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act* (Cap 65A, 2000 Rev Ed) ("**CDSA**") punishable under s 47(6) of the *CDSA* read with s 109 of the *PC*. The second accused person is Lim's husband, Thomas Philip Doehrman ("**Doehrman**"), an American. The s 477A and five s 47(1)(b) charges against him were materially identical with that faced by Lim and he claimed trial to all of them as well. Similar charges were pressed against one Stephen Li Weiming ("**Li**") but he has since absconded from bail. Li is a national of the Republic of China.

2 At the conclusion of the case, after considering the evidence and submissions, I found that the Prosecution had established all the charges against Lim and Doehrman beyond a reasonable doubt and they were accordingly found guilty and convicted. Both the accused are appealing against their respective convictions and sentences.

II. BACKGROUND FACTS

3 The following facts were not disputed. Sometime in 2008, the Papua New Guinea government established the Inclusive Education for National Development for Community Education Trust ("**ITE Trust**")^[note: 1] to set up Community Colleges in Papua New Guinea ("PNG") for, among other things, the improvement of the quality of education and the provision of education skills. The board of the ITE Trust had three trustees — of whom two were co-chairmen of the board. One of the co-chairmen was Michael Maiwa Somare (Moox) who is the son of Sir Michael Thomas Somare, the Prime Minister of Papua New Guinea at the material time. The other co-chairman was Father Xavier Alphonse, who was based in India. The remaining trustee was Doehrman. Lim is

Doehrman's wife. The ITE Trust had the noble aim of providing accessible technical or vocation education to underprivileged children ("**CC Project**"). As Papua New Guinea is a vast and mountainous island country, the cost-effective solution was to conduct lessons from a central location and to broadcast them wirelessly in real time to the Community Colleges.

4 The CC Project was split into two phases. Lim established the first four Community Colleges in phase 1 of the project through her companies, Quest Petroleum (Singapore) Pte Ltd ("**Quest Petroleum**") and Quest Investments (PNG) Limited ("**Quest Investments**"). They were incorporated in Singapore and Papua New Guinea respectively. It was unfeasible to construct conventional brick and mortar buildings due to Papua New Guinea's geological and infrastructural constraints. Therefore, Lim imported easily assembled containers from a Chinese company, Renhe Movable Travelling Lodge Manufacture Co Ltd ("**Renhe**"), and used them as classrooms, dormitories, clinics and police posts.

5 Phase 2 of the project envisaged the founding of 13 more Community Colleges. As the ITE Trust was short on funds, the government of Papua New Guinea obtained a concessionary loan of US\$35 million from the Chinese government through the Export-Import Bank of China ("**EXIM loan**"). The terms of the loan stipulated that a Chinese company was to be appointed as the main contractor of the project. In the event, ZTE Corporation ("**ZTE**") became the main contractor for the second phase of the project. Li was an employee of ZTE and he was responsible for liaising with the ITE Trust. The arrangement between ZTE and the ITE Trust was reflected in a number of written contracts. The ITE Trust and ZTE entered into a Frame Contract which set out the general terms for the CC Project. Under the Frame Contract, both parties signed an additional three contracts to regulate the different aspects of the CC Project. See P24. These three contracts are set out in Table 1 below. For convenience, I shall refer to any one of these contracts as the "ITE-ZTE Contract". See also appendix 1 to this judgment for the chronology of events.

TABLE 1	
NAME	PRICE
Equipment Supply Contract ^[note: 2]	US\$22,435,680.00
Services Contract ^[note: 3]	US\$5,264,180.00
Managed Service Contract	US\$11,114,205.00
Frame Contract ^[note: 4]	US\$38,814,065.00

6 In June 2010, ZTE hired U-Konekt Technologies Ltd ("**U-Konekt**") as its subcontractor. U-Konekt was to install containers and establish parts of Wimax, a wireless network. ZTE drafted a service contract for these purposes, and two copies of it were signed on separate dates in May and June 2010 by the respective parties ("**U-Konekt-ZTE Contracts**").

7 On 8 June 2010, ZTE entered into a separate agreement with Questzone Offshore Limited ("**Questzone**"), a company incorporated in the British Virgin Islands ("**BVI**") on 26 February 2010 ("**Questzone-ZTE Contract**"). See exhibit P6C. On 4 May 2010, Lim and her sister, Lim Swee Kheng, became the only directors of Questzone. Lim was its only shareholder. It was a shell company. Clause 4.1 of the Questzone-ZTE Contract stipulated that ZTE was to pay the full contract sum of US\$3,600,000 to Questzone's Singapore Standard Chartered Bank account after ZTE received at least US\$3,600,000 from the ITE Trust.

8 It is to be noted that the relevant parties – ITE Trust, Questzone, U-Konekt, ZTE entered into the relevant contracts, namely, Questzone-ZTE Contract, ITE-ZTE Contract, U-Konekt-ZTE Contracts on or about ~~the same time when ZTE signed the U-Konekt-ZTE Contract and the Questzone-ZTE Contract on 27 May 2010.~~ In my view, the inference was clear – to indirectly receive payment from ITE Trust for the benefit of Questzone.

9 On 15 July 2010, Lim Swee Kheng issued a Questzone invoice to ZTE for the sum of US\$3,600,000 ("**Questzone Invoice**"). This invoice formed the basis of the s 477A charges. On 30 July 2010, ZTE duly transferred a sum of US\$3,599,972.85 (after service charges) to Questzone's Singapore bank account.

10 Between August and November 2010, Questzone transferred a total of five sums of monies to J&M International Ltd, a BVI company incorporated by Li's wife, Catherine Li (Catherine Chen) ("**J&M International**"), and the personal Standard Chartered bank account of one Sir Michael Somare, the former Prime Minister of Papua New Guinea ("**Somare**") and who is also the father of Mox. These payments formed the basis of the s 47(1)(b) of the CDSA charges.

III. CONTENTIONS OF THE PROSECUTION AND DEFENCE

11 The Prosecution alleged that Lim, Doehrman and Li had engaged in a conspiracy to create a fictitious contract and a false invoice, namely the Questzone-ZTE Contract and the Questzone Invoice. It was further alleged that no services were ever intended to be provided under the Questzone-ZTE Contract as its purpose was to disguise the illicit nature of the US\$3,600,000 payment. The Prosecution postulated that these arrangements were necessary because the intended recipients of the US\$3,600,000 were in positions of conflict of interest as they were involved in either ZTE or the ITE Trust. Moreover, Lim was the wife of Doehrman who was at the material time a trustee of the ITE Trust. The then Prime Minister of Papua New Guinea, Somare is Mox's father. Mox was the co-chair of the ITE Trust. See [25] of the Prosecution's closing submissions. It was also submitted that the accused might have intended to defraud "whosoever might be called upon to investigate the purported commission payment from ZTE to the accused".

12 As for the conspiracy charges for the CDSA offences, the Prosecution submitted that these were made out since the relevant sums were paid — as planned by, inter alia, Doehrman and Lim — out of the US\$3.6m (ie, the criminal proceeds from the conspiracy to commit falsification with intent to defraud), either to Somare (in Singapore), or to Li (via his wife's company in Hong Kong). It was agreed by the Defence that these CDSA charges stand and fall with the s 477A PC charge.

13 Mr Lai, counsel for Lim, contended that there was nothing illicit about the payment of the US\$3,600,000 and that ZTE and the ITE Trust were fully aware of it. It was further submitted that Lim had established herself as an exclusive supplier in Papua New Guinea and she was not prepared to give up her business without compensation from ZTE. As such, it was a legitimate commission/compensation for Lim's loss of business opportunity and future profits. Moreover, the Questzone-ZTE Contract was prepared by ZTE, and Lim's intention in the incorporation of Questzone and the creation of the Questzone Invoice were simply to adhere to the steps set out by a listed multi-national company - ZTE.

14 Mr Tay, counsel for Doehrman, argued that Doehrman had nothing to do with Questzone. He was unaware of how the payment of US\$3,600,000 was described in both the cover letter from Questzone and the enclosed Questzone Invoice until the Corrupt Practices Investigation Bureau ("**CPIB**") had started to investigate him. It was submitted that ZTE had in fact knowingly directed the payment of US\$3,600,000 to Lim through Questzone. In summary, it was submitted that there was no evidence of conspiracy, no falsification of document and that there was no intent to defraud. With regard to the CDSA charges, Mr Tay argued that it was Lim's prerogative as to how she wished to spend her commission. Mr Tay also submitted that the Defence was prejudiced by the Prosecution changing its case as to the alleged victim of fraud and that the Defence was caught by surprise. It was also contended that the Prosecution had breached their disclosure obligations as provided under the *Criminal Procedure Code* (Cap 68, 2012 Rev Ed) ("**CPC**").

IV. CASE FOR THE PROSECUTION

A. *The trials-within-a-trial*

1. *Admissibility of Lim's first statement (PS7)*

15 Three investigating officers from the CPIB recorded a total of four statements from Lim between March and September 2011. Mr Tok Thiam Soon ("**Tok**") recorded the first statement dated 15 March 2011 ("**PS7**"); Senior Special Investigator ("**SSI**") Fong Leong Fai recorded the second and third statements dated 18 March 2011 and 21 March 2011 respectively ("**PS8**" and "**PS9**"); and SSI Wong Ka Leng recorded the last statement dated 15 September 2011 ("**PS10**").

16 Mr Lai objected to the admission of PS7 on the ground of oppression under Explanation 1 of s 258 of the *CPC*. He submitted that Tok subjected Lim to robust and prolonged interrogation which exceeded 10 hours, and Lim, who was 55 years old then, was deprived of sufficient rest. There was also discomfort and pain as Lim had a cataract operation on her right eye on 24 Feb 2011. It was submitted that her will was sapped. An ancillary hearing was commenced to determine the admissibility of PS7.

17 During the examination-in-chief, Lim alleged that Tok said to her, "Your husband confessed everything, that it was not your money, and you are holding it for the PM, and it's all proceeds of crime".^[note: 5] Lim further alleged that Tok told her he would hold her for 48 hours if she did not cooperate with him. She gave evidence that she felt her life was in Tok's hands. Next, Lim complained of pain in both her eyes and requested Tok to release her so that she could get some sleep, but Tok allegedly replied that she was not allowed to do so until she had finished all her statements. Lastly, Lim said that she was exhausted and felt extremely cold in the interrogation room. She complained about the temperature to Tok but he did not adjust the thermostat.

18 On cross-examination, Lim conceded that Tok did ask if she needed medical attention, and that she declined his offer because she did not view her eye discomfort as a life-threatening situation.

19 The Prosecution submitted that Lim was alert throughout the recording process. She had no significant eye problem or discomfort at the time the statement was recorded. Her doctor had testified that her right eyesight had improved significantly and Lim herself admitted that she had no complaints to make about her left eye contact lens for a full three weeks. Moreover, the Prosecution contended that no person in the sort of pain that Lim claimed to be in would have declined the offer of medical attention, especially when there was no perceivable prospect of leaving any time soon. Lastly, it was submitted that Lim was not a credible witness as she took excessively long pauses to answer simple questions in relation to her eyesight. Contrary to the Defence's claims of "severe pain and discomfort", Dr Jerry Tan testified that Lim would have had no more than average discomfort.

20 Having considered the respective submissions and the evidence, I was of the view that the Prosecution had proved beyond a reasonable doubt that the statement was made voluntarily, without any threat, inducement, promise or oppression. I found that based on Dr Jerry Tan's evidence, Lim had exaggerated her discomfort to her eye. In my view, Lim was alert during the recording of her statement. She was also able to read and make amendments to her statement. If she was indeed experiencing great pain and discomfort then why she did not take up the offer by Tok to seek medical attention? I found Tok to be a truthful witness. There was no reason for him to lie. I accepted his evidence that he ascertained from Lim as to whether she was alright and that Lim confirmed she was alright and was able to continue with the statement recording. I found the statement to be made voluntarily without any threat, inducement, promise or oppression. I rejected the submission that Lim's will had sapped. Accordingly, I admitted PS7 into evidence.

21 Counsel for Lim contended in its closing submissions that less weight should be placed on Lim's CPIB statements because they were recorded under oppressive circumstances. As counsel brought forth essentially the same arguments that were heard and refuted during the ancillary hearing e.g. labouring under severe pain, discomfort and imbalanced vision, I could not agree with this submission.

22 It was also submitted that this court should be slow to accept Lim's CPIB statements.^[note: 6] They relied on *PP v Juan Hui* [2011] SGDC 403 ("*Juan Hui*"). In that case, the District Court placed little weight on a *CPC* statement made by one Madeleine because of certain procedural improprieties. First, Madeleine's *CPC* statement was recorded in five minutes by a "cut-and-paste" method from a previous *Prevention of Corruption*

Act (Cap 241) ("**PCA**") statement (*Juan Hui* at [35]-[36]). Second, it appeared probable to the learned District Judge that significant portions of the *CPC* statement were paraphrased by the recording officer because Madeleine had occasional difficulties in expressing herself clearly in court (*Juan Hui* at [37]).

23 The present case is distinguishable from *Juan Hui* in both aspects. As regards the alleged "cut-and-paste" method, Tok admitted that he copied parts of Lim's *PCA* statement into PS7, but he also testified that he took Lim through every paragraph of PS7 and amended her statement along the way.^[note: 7] Moreover, Tok took more than two hours to record PS7. He started at 11.30pm on 15 March 2011 and ended at 1.40am on 16 March 2011. This corroborated his evidence that he allowed Lim to review each paragraph of her statement. Turning to the paraphrase argument, it must be noted that the testimony of Madeleine in court had supplied explanations to fill in gaps in her statement rather than to contradict them (*Juan Hui* at [33], [34] & [38]). Also, the court did not find that there were serious discrepancies or material contradictions in her evidence (*Juan Hui* at [43]). The court's comments on the effect of paraphrased statements must be read in this context. It is certainly ideal for all statements to be recorded verbatim, but I cannot say that Lim's statements were recorded in breach of procedure. The full extent of Lim's dishonesty in her CPIB statements will be elaborated upon later, but it suffice to say for now that Lim had availed herself of opportunities to amend her statements. In short, the procedural breaches in *Juan Hui* were much more egregious than the alleged ones in the present case.

24 Counsel for Doehrman likewise attempted to undermine the credibility of Lim's CPIB statements in its closing submissions. It was contended that they were not an accurate reflection of what was said at the CPIB because SSI Fong Leong Fai allegedly failed to delete three paragraphs from the electronic version of one of Lim's statements.^[note: 8] However, this was a wholly unfounded allegation. SSI Fong denied during cross-examination that Lim had made a cancellation of three entire statements to her statement.^[note: 9] I did not see any reason to disbelieve the evidence of SSI Fong. Counsel also failed to adduce any objective evidence to support its accusation.

2. Admissibility of Doehrman's first statement (PS1)

25 Two CPIB investigating officers recorded a total of five statements from Doehrman between March and September 2011. Principal Special Investigator Tan Kim Hock ("**PSI Tan**") recorded the first and the fourth statements ("**PS1**" and "**PS4**") whereas Special Investigator Goh Lanjun ("**SI Goh**") recorded the rest of them ("**PS2**", "**PS3**" and "**PS5**").

26 Mr Tay objected to the admission of PS1 on the ground of oppression. An ancillary hearing was commenced to determine the admissibility of PS1. Mr Tay argued that his client was detained for about 21 hours in total. Doehrman testified that his will was sapped because he was very tired. But he said that he was not subjected to any threats, inducements or promises.

27 The Prosecution submitted that Doehrman was given ample breaks and refreshments during the time he was held at the CPIB. Doehrman affirmed that he was allowed to take his medications whenever he needed to, and he did not complain of pain or discomfort at any point. He was focused and alert throughout the statement recording process.

28 Having heard the submissions of both parties and also having gone through the evidence, I was satisfied beyond any reasonable doubt that PS1 was made voluntarily, without any threat, inducement or promise, or any circumstances of oppression that sapped Doehrman's free will. I found Doehrman had sufficient rest and was given the opportunity to take his medication and at no time he had complained of pain. I also found that he was reasonably fit at that time. He was able to read and make amendments to the statement. Accordingly, I admitted the statement (PS1) into evidence.

3. Admissibility of Shu Liang & Zheng Bang's statements (PS11 & PS12)

29 SI Goh recorded a statement from one Shu Liang on 22 July 2011 (“**PS11**”); he was an employee of ZTE (S) Pte Ltd who worked in the Post Sales Department. SSI Robin Lee Eng Teck recorded a statement from one Zheng Bang on 27 June 2011 (“**PS12**”). Zheng Bang was the CEO of ZTE Asia Pacific. Both the defence counsel objected to the admission of these statements on the basis that they were hearsay evidence. Both Shu Liang and Zheng Bang were unable to attend trial.

30 The Prosecution submitted that they had met the requirements under s 32(1)(j)(ii) of the *Evidence Act* (Cap 97, 1997 Rev Ed) (“EA”), which states:

Subject to subsections (2) and (3), statements of relevant facts made by a person (whether orally, in a document or otherwise), are themselves relevant facts ... when the statement is made by a person in respect of whom it is shown — that despite reasonable efforts to locate him, he cannot be found whether within or outside Singapore;

Relying on *Gimpex Ltd v Unity Holdings Business Ltd* [2015] 2 SLR 686 at [96] (“*Gimpex*”), the Prosecution argued that the statements of Shu Liang and Zheng Bang were the best evidence available in the light of their unavailability.

31 SSI Lim Yen Chun (“**SSI Lim**”) was the CPIB officer who made efforts to trace Shu Liang and Zheng Bang for the trial. SSI Lim testified that Shu Liang’s last exit from Singapore was on 24 March 2013 and he had not entered Singapore since then. She conceded that she did not conduct an Internet search to get in touch with him. As regards Zheng Bang, SSI Lim informed him that she could arrange air tickets and accommodation for him to attend the trial in Singapore. However, Zheng Bang was reluctant to fly to Singapore because he wanted to settle into his new job. On cross-examination, SSI Lim admitted that Zheng Bang might have attended the trial if she had offered to cover his costs in Singapore. But she did not do so as Zheng Bang was unwilling to come to Singapore.^[note: 10]

32 Having considered the evidence and submissions of all the parties, I adopted the submissions of the Prosecution and held that the statements of Shu Liang and Zheng Bang were admissible pursuant to s 32 of the EA. In its closing submissions, counsel for Lim urged the court to reverse its earlier decision to admit the aforesaid statements by exercising the powers under s 279(7) of the *CPC*.^[note: 11] It was submitted that Shu Liang’s statement had little probative value because, by his own admission, he was not involved in the Questzone-ZTE Contract. As for Zheng Bang, he had no part to play in the CC Project and his statement was “replete with multiple hearsay”. With respect, I stood by my earlier decision to admit their statements. Their evidence that ZTE required their subcontractors to be able to provide real services was highly probative for the purpose of establishing that Lim and Doehrman had the intent to defraud.

B. Evidence of PWS – Ms Mariani Halim

33 Halim was a former relationship manager at Standard Chartered Bank. She testified that Lim and Doehrman met her sometime in May 2010 to open a corporate account. The purpose of the account was to receive consulting fees for a project in Papua New Guinea.^[note: 12] Halim later discovered that they had not incorporated a company yet. At Lim and Doehrman’s request, Halim referred them to Portcullis, the company secretary which eventually helped them to incorporate Questzone.^[note: 13] She recalled that both of them participated actively in the discussion with her.^[note: 14]

C. Evidence of PW11 – Ms Lim Swee Kheng

34 Lim Swee Kheng is the sister of Lim Ai Wah. She testified that she was a director but not a shareholder of Questzone.^[note: 15] She said that Lim asked her to be involved in Questzone for administrative work. On 15 July 2010, Lim Swee Kheng prepared the Questzone Invoice and its cover letter at Lim’s request.^[note: 16] She was also instructed by Lim to make a stamp for Julius Kera.

D. Evidence of PW13 – Mr Richard Bussiere (“Bussiere”)

35 Bussiere was an employee of U-Konekt. He was the Chief Technical Officer and at one time the CEO of U-Konekt. The Prosecution admitted P25 and P26 through Bussiere. P25 was a business profile of U-Konekt as at 11 November 2009. It stated that Doehrman had been a shareholder of U-Konekt since its incorporation on 27 June 2008, and that Quest Investments became a shareholder on 13 January 2009. P26 was a business profile of U-Konekt as at 24 November 2011. It showed that the ITE Trust became a shareholder of U-Konekt on 21 July 2010, and that Quest Investments acquired more shares in U-Konekt on the same day. Doehrman’s name did not appear in P26 as at 24 November 2011. All the shareholders had become corporate entities by then.

36 Bussiere testified that Doehrman, being a trustee of the ITE Trust, faced a conflict of interest when the ITE Trust invested in U-Konekt. In other words, Doehrman used trust money to invest in a company in which he had an equity stake. Therefore, he removed his name from the shareholding list and continued to hold shares in U-Konekt through Quest Investments. During cross-examination, the defence counsel suggested to Bussiere that the reason for removing the individual shareholders from U-Konekt was to make U-Konekt a more attractive proposition for investors. Bussiere conceded that his explanation made sense.

37 Bussiere said that the Questzone-ZTE Contract was almost identical to the contract that U-Konekt was executing. He noted that it was very unusual for full payment to be made to Questzone in advance of any work being done. The norm was for payment to be released as and when work was done. In the closing submissions, counsel for Doehrman alleged that Bussiere retracted from his initial position that the Questzone-ZTE Contract was fraudulent.^[note: 17] However, the portion of Bussiere’s cross-examination which counsel relied on was taken out of context. Bussiere stated that he was repeating what Doehrman told him after his arrest. The full excerpt of the relevant portion is set out below:^[note: 18]

Q: What was the purpose of this contract?

A: The purpose -- okay. The purpose of this contract, ***based on conversations that I have had with the accused after he was arrested***, is to compensate him for the loss of revenue related to the containers that he was previously getting with -- or from and by when he was selling the containers for phase 1 to the government of Papua New Guinea. [Emphasis added in bold italics].

38 During Bussiere’s time in Papua New Guinea, he never met anyone from Questzone or observed any activity carried out by anyone from Questzone. Xu Fenglei, Richard (PW14), the MD of ZTE (S) Pte Ltd also confirmed that he was not aware that Questzone delivered any services under the Questzone-ZTE Contract. When asked to compare the U-Konekt-ZTE Contracts with the Questzone-ZTE Contract, Bussiere said that he believed the Questzone-ZTE Contract to be a fraudulent contract.^[note: 19] On the other hand, Xu Fenglei, Richard claimed that it was not a simple commission contract for the provision of services as stated at Annex A of the Questzone-ZTE Contract. He further added that the word “commission” was not stated in the said contract. With due respect, I cannot accept his statement that it was not a fictitious contract as he had acknowledged that no services had been provided by Questzone. In my view, such a contract was clearly fictitious.

39 Bussiere gave evidence that he resigned from U-Konekt for two main reasons. First, he felt that U-Konekt was “double-dipping”. The minutes of the board meeting of 14 November 2011 stated that U-Konekt was to be reimbursed by the ITE Trust. Bussiere felt that this was not correct because U-Konekt had already been paid for its work through the U-Konekt-ZTE Contracts.^[note: 20] Second, the same minutes of meeting stated that Julius Kera was to be appointed as the executive director and assume control of U-Konekt from him. Bussiere testified that he resigned for another reason - because Julius Kera embezzled around 1 million kina from U-Konekt. He strongly objected to Julius Kera assuming any role within U-Konekt.^[note: 21] Bussiere added that he became “completely disillusioned” with the CC Project at that point.^[note: 22]

E. Evidence of PW15 – Ai Yong Qiang

40 Ai Yong Qiang was the Post Sales Leader, ZTE (S) Pte Ltd as at June 2010. He confirmed that he approved the payment of US\$3.6 million upon the submission of the Questzone invoice (exhibits P13 and P14). But he did not verify whether work was done under the Questzone-ZTE Contract. He was unaware then that Lim was a shareholder and director of Questzone.^[note: 23] He would not have approved the payment if there was no intention to carry out the supply of equipment or if part of the monies were to be paid to Li or used to bribe Papua New Guinean officials.^[note: 24] Counsel for Lim highlighted that Mr Ai gave evidence that the Questzone-ZTE Contract was a "valid contract". Again, this statement must be read in the context of the rest of his testimony.^[note: 25] They are reproduced at length below:^[note: 26]

Q: Do you agree with Mr Xu that tab 5, the Questzone contract, is a commission contract?

A: Contracts are dealt with by professionals. There are specific people in charge of contracts in our company. I can't pass any comments on the testimony given by Mr Richard Xu.

Q: All right. But you would not have any personal knowledge or observation as to whether or not this Questzone contract is a commission contract?

A: To the best of my knowledge, this is a contract for road repair. I can't tell whether it is a commission contract or not.

Q: Do you agree with me that the Questzone contract is not a fictitious contract? In other words, this is a valid contract as what you have testified.

A: Yes. To my knowledge, it's a valid contract.

41 Mr Ai's apparent concession to the Defence bore little weight because he was not appointed by ZTE as a legal professional to deal with contracts. On the face of it, the Questzone-ZTE Contract was merely a contract for road repair. This in fact indicated that the contract served its purpose well by concealing its true purpose to an untrained eye. It bears reminding that Mr Ai would not have approved the payment if he had known that it was not for the provision of services or supply of equipment.^[note: 27] He approved of the payment because he did not verify whether work was carried out under the contract. For completeness, I also accepted the Prosecution's written submission at [104] that PW14 Xu merely said that on the face of P3, it did not look fictitious ie it was a good fake contract.

V. CASE FOR THE DEFENCE

42 At the close of the case for the Prosecution, having considered all the written submissions and the evidence, I was of the view that the Prosecution had made out a *prima facie* case which, if unrebutted, would warrant a conviction of the charges against Lim and Doehrman. I called upon them to enter upon their defence and administered the usual allocution. Lim and Doehrman elected to give evidence on oath.

A. Evidence of Lim Ai Wah

1. Profits from the CC Project

43 Lim testified in examination-in-chief that she was responsible for the establishment of four Community Colleges between 2007 and 2010. They were located at Marienberg, Wabag, Port Moresby (Secretariat office) and Karkar.^[note: 28] She had sourced the portable containers from Renhe. Lim told the court that she earned a profit margin of 10 to 30%.^[note: 29] She was reimbursed by Young & Williams Lawyers, the Papua New Guinean law firm which held the funds of the ITE Trust. Apart from these profits, she also charged the ITE Trust a 2% handling fee.^[note: 30]

44 Under cross-examination, Lim confirmed that she and her husband had shared the profits in Quest Investments and Quest Petroleum equally. Their profit margins from the container transactions had increased each year, from 28% in 2008 to 49% in 2010. Lim then admitted that the commission should have been received by Quest Petroleum instead of Questzone, and had it gone to Quest Petroleum, the money would have belonged to both Lim and Doehrman.^[note: 31] However, Lim rejected the Prosecution's contention that the money in Questzone belonged to her and Doehrman. She said that Questzone belonged to her only.

45 Lim confirmed that Doehrman had the authority to sign all contracts on behalf of the ITE Trust. She admitted that Doehrman as a trustee of the ITE Trust was buying from her as a supplier. DPP Markandu suggested to Lim that the container sales created a conflict of interest for Doehrman. Lim replied that she had continued with Somare's blessing.^[note: 32]

46 Under cross-examination from Mr Tay, Lim testified that her husband ceased to be involved in her business after he became a trustee of the ITE Trust in 2008.

2. *Lim's request for a compensation*

47 Lim testified that she received an order from Somare in March 2010 to establish another five Community Colleges.^[note: 33] For this reason, US\$3 million was paid by ITE Trust to Quest Petroleum. This was after she founded the first four Community Colleges between 2007 and 2010. She was very happy to hear of this as it was an extremely lucrative deal.^[note: 34] At around this time, ZTE did a demonstration of distance-based learning to the ITE Trust. They were lobbying hard to take over Lim as the main contractor of the CC Project. She told Li that she would not allow him to take over her business without compensation from ZTE.^[note: 35] In the event, Lim aborted the project to establish the additional five Community Colleges. Out of the US\$3 million that was remitted to Quest Petroleum for the aforesaid project, US\$2,400,000 was transferred to ZTE as part payment towards the down payment on the ITE-ZTE Contract.^[note: 36] See also [67] below the reason proffered by Doehrman for doing so. Lim used the remaining US\$600,000 to offset the costs incurred in establishing the Karkar Community College, one of the four schools which she had established between 2007 and 2010.^[note: 37]

48 Under cross-examination, Lim confirmed that it would not be possible for the ITE Trust to carry out the second phase of the project without funding from the EXIM loan. She agreed that payment under the Questzone-ZTE contract was effected on 30 July 2010, approximately 8 months before the EXIM loan was concluded on 17 March 2011. She then conceded that it would be extremely unusual for a large corporation like ZTE to pay a commission on a project before there was certainty of the project taking off. During re-examination, Lim stated that ZTE was confident that the business will go through and that the agreement for the EXIM loan will be signed. With due respect, I did not accept her explanation. It would be commercially naive of ZTE to pay commission for any deal before it was concluded.

49 DPP Markandu also questioned Lim's reasons for expecting ZTE to compensate her. Lim testified that ZTE did not pay her out of goodwill and insisted that she had a legal basis for demanding compensation. Lim stated that she would not have given up her business if ZTE had not paid her. DPP Markandu then pointed out to Lim that she only had instructions to establish an additional five Community Colleges. But she appeared to be seeking a compensation for loss of profits for all future Community Colleges. Lim replied that it was ZTE's prerogative to decide on the compensation amount.

50 Lim was shown her previous CPIB statement, PS8, where she stated that she was satisfied with a compensation of US\$950,000. However, she retracted from her position in PS8 and said that she was expecting to receive US\$3,600,000. Lim explained that she wanted to maintain a minimum figure of US\$950,000 after giving part of the US\$3,600,000 away. In the same statement she also stated, "ZTE was not legally obliged to compensate me". Lim testified that PS8 was incorrect in this respect. Lim was unable to point out to the court where in any of her previous statements she said that she expected to receive \$3,600,000 as compensation. I found that Lim had been caught lying during cross-examination and her explanations with regard to her share of the US\$3,600,000 were unbelievable.

3. Calculation of the commission/compensation figure

51 Lim testified in in examination-in-chief that Li told her that his boss was willing to pay her a 10% commission to compensate Lim for her work. By May 2010, Lim knew that she would be receiving US\$3,600,000, and that the total value of the ITE-ZTE Contract was estimated to be around US\$38 million. [note: 38] In fact the Frame Contract for the US\$38,814,065.00 was signed by ITE on 31 August 2010 (see exhibit P24). Under cross-examination, Lim confirmed that Doehrman calculated the quantum of the down payment for the ITE-ZTE Contract in his handwritten notes. [note: 39] Lim also knew that ZTE could not make the US\$3,600,000 payment to Questzone unless down payment was made to ZTE.

4. Incorporation of Questzone Offshore Limited

52 Lim testified that Li also told her that ZTE wanted her to buy a BVI company. [note: 40] She complied with ZTE's instructions as she wanted to be compensated. Under cross-examination, Lim admitted that Questzone was a shell company that was set up for the purpose of receiving the commission payment and Questzone did not provide any of the services listed in the schedule attached to the Questzone-ZTE Contract. Lim denied that she knew ZTE wanted her to sign a false contract as she was just following their directions.

5. Signing of the Questzone-ZTE Contract

53 On 8 June 2010, Lim travelled to Shenzhen with her husband. The purpose of her visit was to sign the Questzone-ZTE Contract, whereas Doehrman was there to sign the ITE-ZTE Contract. The signing of the contracts took place at the Shangri-la Hotel instead of the ZTE office. Li was alone with the contracts. Doehrman left Lim and Li after he signed the ITE-ZTE Contract. Lim explained that this was "because he's ITE trust". [note: 41]

54 Lim pointed out to Li that the Questzone-ZTE Contract was a service contract and not a commission contract, but Li reassured her that she did not have to do any work for ZTE. Lim testified that she believed Li and signed the contract in utmost good faith. She did not even skim through the contract. Li subsequently left with all the contracts, leaving Lim without any originals of the contract. Under cross-examination, Lim was shown her previous statement, PS9, where she stated "I wish to explain that I have never seen [the Questzone-ZTE Contract] before". Lim proffered two dissimilar explanations for this statement. First, Lim said she meant that she signed the document on behalf of one Julius Kera. Next, Lim said she meant that she did not have the Questzone-ZTE Contract in her possession. I found that neither explanation was a satisfactory response to the Prosecution's question.

55 Lim alleged that Li mentioned that he preferred a Papua New Guinean lawyer to Lim to sign the Questzone-ZTE Contract. Lim accommodated his request and obtained permission from Julius Kera to sign the contract in his name. Julius Kera did consulting works for Lim's companies i.e. Quest Petroleum and Quest Investments. Under cross-examination, Lim was shown her previous CPIB statement, PS9, where she stated that she did not sign the Questzone-ZTE Contract, and PS10, where she admitted that she signed on behalf of Julius Kera. The prosecution put it to Lim that she lied in PS9. Lim's response was simply a bare denial.

56 Lim testified as to a meeting on 24 September 2012 between one Derek Kang and ZTE. Derek Kang was a lawyer from Rodyk & Davidson LLP who represented Li. [note: 42] At the meeting, Derek Kang said that it was common for ZTE to draft their commission contracts in the form of a works contract. But I accorded no weight to it since this was clearly hearsay evidence. During cross-examination, Mr Tay asked Lim about this meeting again. Besides the aforesaid factor, Lim's evidence had to be disregarded because leading questions were put to her. Under s 145(2) of the EA, I had the discretion to prohibit leading questions from being put to Lim as she was a witness who showed a strong interest or bias in favour of the cross-examining party.

6. Questzone Invoice

57 Sometime in July 2010, Li informed Lim that ZTE required an invoice in order to make the payment of US\$3,600,000 to her. Lim instructed her sister to prepare the invoice in accordance with Li's specifications. Lim signed the initials of Julius Kera on the Questzone Invoice and its cover letter dated 15 July 2010. This was again because Li wanted a Papua New Guinean lawyer to sign on them. Li collected the cover letter and the invoice personally from Lim. On 30 July 2010, Lim received US\$3,600,000 from ZTE.

58 Under cross-examination from Mr Tay, Lim testified that Doehrman was not involved in the preparation and eventual issuance of both the Questzone Invoice and the Questzone-ZTE Contract.

7. Distribution of US\$3,600,000

59 Lim testified that she gave away part of the money to various parties. Under cross-examination, Lim agreed that P45-J was a document with Doehrman's handwriting and it earmarked \$750,000, \$600,000 and \$560,892 for Li, Lim and Somare respectively. It was thus a document which purportedly contained a plan as to how the \$3.6 million would be distributed. Lim also agreed that P45-F was a document with Doehrman's handwriting and it similarly pertained to how the \$3.6 million would be distributed. Lim added that the numbers on these documents were inaccurate.

8. Payment to J&M International

60 Lim made two payments of US\$750,000 and US\$100,000 to J&M International which was purportedly owned by Catherine Chen (Catherine Li) who was the wife of Li. Catherine Li was purportedly well-connected in China as her brother allegedly worked for Mr Hu Jintao, and Lim paid Catherine Li US\$750,000 for referring business opportunities to her. Lim got to know Catherine Li near the end of 2009 and they met at least half a dozen times since then. Lim subsequently sent a sum of US\$100,000 to Catherine Li to conduct a feasibility study for a mining project. Lim clarified that the details of the US\$100,000 payment were incorrectly described as "Out of pocket & expenditure from 2008 to present".

61 Under cross-examination, Lim revealed that she knew nothing of Catherine Li's brother other than him being a secretary to Mr Hu Jintao. She also revealed her limited understanding of the business opportunities e.g. natural resources and fisheries. Lim confirmed that she was prepared to invest US\$750,000 in someone whom she had known for less than six months in exchange for returns. I found this hard to believe. Lim's annual profits from the container sales between 2008 and 2010 totalled up to S\$806,160.53.^[note: 43] Her total profits from Quest Petroleum over the span of three years were essentially less than what she had transferred to Catherine Li over the short span of three months.

62 Lim was shown her previous CPIB statement, PS7, where she stated "I understand that [Li] needed to give his boss money so as to facilitate the loan from EXIM, China". She disavowed PS7 and claimed that it was a "ridiculous statement" on her part. She said that there were many contradictions in PS7. Lim confirmed that there was no mention whatsoever about the purpose of the \$850,000 in any of her cautioned statements and her Case for Defence. Lim was also shown PS9 where she stated that J&M International was set up for the sole purpose of receiving the payment of US\$850,000 from Questzone, and that she did not know anything else about the company. Lim insisted that she does not know the business of J&M International even up till today.

9. Payment to Somare

63 Lim also testified in examination-in-chief that she sent a total of US\$784,000 to Somare over three transactions between August and November 2010. Lim explained that she and Doehrman had known Somare since the 1990s; they considered him a close family friend. Lim also met Somare's wife on many occasions and they socialised by travelling together. As Somare had wanted to build a house in Papua New Guinea for a number of years, Lim and Doehrman told him that they would like to give the aforesaid sum as a gift for his housing needs.

64 Under cross-examination, Lim affirmed that Somare's share of the \$3,600,000 was possibly agreed sometime between April and June 2010. Lim denied that Somare was acting in conflict of interest and said that the payment was a "blessing to bless others as I choose". She was then shown the stubs of the cheques made to Somare; they stated "services rendered" and "oil search redemption". Lim said that the descriptions were incorrect and they were "all my own internal thinking, my own thoughts". I found that this was yet another instance where Lim was caught lying by the Prosecution. She was deliberately disguising the true nature of the payment to Somare by characterising it as a commercial transaction. In my view, it was clear that Lim was not a truthful witness.

B. Evidence of Thomas Doehrman

1. Doehrman's involvement in the CC Project

65 Doehrman testified that he had known Somare and his family since 1991. Somare felt that the country was not addressing the educational needs of the people; the school dropout rates between grade 8 to 12 were somewhere in the range of 80 to 85%. By the end of 2007, it was envisioned that the CC Project would expand to all 89 districts of Papua New Guinea. The intention to seek the Chinese government's financial assistance was formed at about this time. The government of Papua New Guinea eventually decided to borrow US\$35 million from the Chinese government through the EXIM Bank of China on the condition that the main contractor would be a Chinese company.^[note: 44] In May 2010 the Papua New Guinea government formally approved for the negotiation of the loan for US\$35 million (see exhibit P54).

66 Doehrman testified that he and Lim started work in 2007. Lim was involved in the discussions with Renhe and Doehrman would assist her by providing information. Quest Petroleum and Quest Investments purchased kitted containers without funding from the Papua New Guinea government between mid-2007 to late 2008. This was to demonstrate the viability of the project. Doehrman said that phase 1 of the CC Project belonged to his wife.

67 In relation to the down payment for the ITE-ZTE Contract, Doehrman testified that it was considered wiser for Quest Petroleum to make a partial payment of US\$2,400,000 to ZTE on behalf of the ITE Trust because this allowed the ITE Trust to save on currency exchange costs.^[note: 45] If Quest Petroleum were to transfer the Singapore dollars equivalent of US\$2,400,000 to the ITE Trust before the ITE Trust made a complete down payment to ZTE, the ITE Trust would suffer multiple currency exchange losses. It would involve the conversion of Singapore dollars to US dollars, from US dollars to the Papua New Guinean kina, and lastly from the kina back to US dollars again. In Doehrman's words, "it was a judgment call to save money for the trust".^[note: 46] However, no record of minutes from the ITE Trust was produced to support this bare allegation.

68 Under cross-examination, Doehrman testified that he did not excuse himself from an ITE Trust meeting which decided to pay Lim a fee of 3% to cover "time/cost expenses". He explained that he did not leave the meeting because Somare was with them. In relation to Lim's involvement in the container sales, Doehrman maintained that Lim could have ran the business without him because she acquired knowledge of the containers after the first few transactions.

2. The ITE Trust

69 The ITE Trust was established in 2008 to manage the CC Project independently of the existing Ministry of Education programmes. The setting up of the Internet gateway and network allowed the ITE Trust to be self-sustainable; it served the CC Project directly and offered opportunities for commercial applications. Doehrman was made a trustee when the ITE Trust was first formed. The ITE Trust was fully aware of Doehrman and Lim's involvement in phase 1 of the CC Project.

70 Under cross-examination, Doehrman stated that his duty as a trustee was only owed to Somare and his Cabinet. He stated that the interests of the Papua New Guinea government were as important as his personal interests.

3. *U-Konekt Technologies Ltd*

71 Doehrman testified that U-Konekt was incorporated in 2008. It was a private company limited by shares in Papua New Guinea and it had no connection whatsoever with the government of Papua New Guinea. He was happy to take, and he had declared, a 20% interest in U-Konekt. The ITE Trust took an interest in U-Konekt because the CC Project needed its network services. At a meeting of the ITE Trust on 13 October 2010, Doehrman declared his conflict of interest and left the meeting at Mr Sheppard's request.

72 Under cross-examination by Mr Lai, Doehrman stated that Bussiere was demoted from CEO to CTO of U-Konekt because he failed to generate a single billable sale for the company. There was also a major confrontation between one Father Dr Xavier Alphonse SJ ("**Father Xavier**") and Bussiere at a board meeting of the ITE Trust. It ended in Bussiere leaving U-Konekt and Papua New Guinea.

4. *The Questzone-ZTE Contract & the Questzone Invoice*

73 In the morning of 8 June 2010, Doehrman was given copies of the ITE-ZTE Contract and they were executed by him. He claimed that he was not involved in the separate discussions which Lim had with Li because he wanted to play golf with ZTE employees at Mission Hills. It should be noted that Lim had a different explanation for this. She stated in examination-in-chief that Doehrman left the Shangri-la meeting "because he's ITE Trust".^[note: 47] Doehrman also told his wife that he would leave the Questzone-ZTE Contract to her as it was her business with ZTE. He then said, "In return for all the work you have done, this is yours".

74 Doehrman testified that he was not familiar with the Questzone-ZTE Contract until CPIB called at his home on 15 March 2011. It was not signed in his presence. It was also not drafted by him. Doehrman understood that there was a consulting arrangement between ZTE and Lim. He stated that ZTE modified a works contract for the Questzone-ZTE Contract due to tax purposes. ZTE did not request Questzone to undergo a pre-qualification exercise which U-Konekt did in its bid to become ZTE's subcontractor. Doehrman found the Questzone-ZTE Contract "unusual" because its annex referred to "U-Konekt". Doehrman stated that the "Scope of services" in the U-Konekt-ZTE Contracts took up nine pages while the "Scope of services" in the Questzone-ZTE Contract took up a total of one page only.

75 Doehrman testified that he was not in Singapore at the time the Questzone Invoice and its cover letter were "actioned". He was in Vietnam from 14 to 16 July 2010. He had limited involvement in the setting up of the Questzone bank account; he accompanied his wife to the Standard Chartered Bank only once.

76 Under cross-examination, Doehrman stated he was aware that Questzone was set up to receive a US\$3,600,000 compensation or commission from ZTE.^[note: 48] Questzone was not pre-qualified in any way as compared to U-Konekt. Doehrman agreed that up to 18 April 2011 when he signed PS4, his evidence to CPIB was that the documents from Questzone were signed by Julius Kera. He confirmed that Julius Kera was not a director or shareholder of Quest Petroleum, but he insisted that Julius Kera had the right to allow his name to be used for the Questzone-ZTE Contract and the Questzone Invoice.^[note: 49]

77 During re-examination, Doehrman testified that he did not know that there was a "mechanism" put in place to compensate Lim until Lim briefed him after the CPIB investigations had commenced. Doehrman also said that he was not consulted as to the descriptions for the cheque stubs. He was not even aware prior to the investigations that the descriptions were as such.

5. *Distribution of the US\$3,600,000*

78 Under cross-examination by Mr Lai, Doehrman stated that neither ZTE nor ITE Trust nor the Papua New Guinea government complained to him with regard to the US\$3,600,000 that was received by Questzone.

79 Under cross-examination by the Prosecution, Doehrman was shown some of his handwritten notes which were annexed to his CPIB statement, PS3. As regards the 5 July 2010 note, Doehrman said that "1.5" referred to Lim's Questzone-related funds which were meant for their new house in Singapore, while "4.3" referred to their net worth. Turning to TPD010, Doehrman stated that a "600,000" referred to the compensation to his wife. Lim was present when TPD010 was written. However, he later stated that the total compensation was \$3,600,000, and \$600,000 represented the compensation for Lim's establishment of the first four Community Colleges.

80 Doehrman testified under cross-examination that US\$750,000 was sent to J&M International for Catherine Li while US\$100,000 was for the "feasibility study follow-up". Doehrman was then referred to P8, a remittance application form dated 3 August 2010 which described the remittance of US\$750,000 from Questzone to J&M International. The details of payment stated: "For services rendered for year 2008 to present". Doehrman said that he did not know whether this description was wrong because he did not write this. He was next referred to P9, a remittance application form dated 18 November 2010 which described the remittance of US\$100,000 from Questzone to J&M International. The details of payment stated: "Out of pocket cost and expenditure from 2008 to present". He agreed that P9 does not state "feasibility study" anywhere in it but added that this was not his document.

81 Doehrman was shown a number of cheque stubs which related to Questzone's payments to Somare. They stated "Boss Service Rendered" and "Boss, Oil research redemption". DPP Loh suggested that the descriptions of the cheque stubs did not tally with Lim's evidence that payment was to help Somare with his housing needs. Doehrman replied that he does not know how his wife wrote her cheque stubs and denied that the descriptions were deliberately written incorrectly.

C. Evidence of Greg Sheppard

82 Greg Sheppard testified that he had been a lawyer in Young & Williams, a Papua New Guinean law firm, for 25 years. He was engaged by the ITE Trust to administer their funds and advise them on legal matters. There were occasions when he was expected to take on the role of a trustee if a position became vacant, but he relinquished that position as soon as they appointed a new one. Mr Sheppard said that the US\$3,600,000 payment from ZTE to Questzone was a commission to compensate Lim for the loss of her business. From his enquiries, such commissions are routinely transacted in commercial procedures. The meeting on 24 September 2012 was raised again, but I disallowed Mr Tay's line of questioning as what Mr Sheppard heard was clearly hearsay.

83 Under cross-examination by DPP Kow, Mr Sheppard stated he knew Lim was making money from the ITE Trust, money that her husband and others would approve to be paid to her. He admitted that there might be a problem with Doehrman approving a payment to Lim because Lim was his wife. But Mr Sheppard added that it might not because it just required the consensus of everyone on the board.

D. Evidence of Julius Kera

84 Julius Piel Kera testified that he provided legal consultancy services to Quest Investments and Quest Petroleum. He was the CEO and a shareholder of U-Konekt. U-Konekt was established as an Internet Service Provider in Port Moresby, Papua New Guinea. Lim told him that ZTE was willing to pay her 10% of the contract price as a form of compensation for taking over the business from her. Lim told him that ZTE requested for his name to be stated in the commission contract, and Julius Kera gave Lim permission to do so. He said he asked Doehrman and Lim to procure some self-inking stamps on his behalf because there were only a few stamp sellers in Papua New Guinea. A stamp was kept in Lim's home for him to pick up when he travelled to Singapore. Under cross-examination by Mr Tay, Julius Kera confirmed that Doehrman had never dealt with any matter relating to Questzone.

85 Under cross-examination by DPP Mr Kow, Julius Kera said that signatures do not automatically carry legal significance. It was his usual practice to read a contract before signing it as that was to be expected of any lawyer.^[note: 50] When asked if he would have wanted to see the documentation which Lim would affix his name to, Julius Kera evaded the question and gave a long and confusing answer. I placed little weight on his evidence. Julius Kera's suspicions ought to have been aroused when he learnt that ZTE gave specific instructions to Lim that her name was not to be displayed on the Questzone-ZTE Contract.^[note: 51] However, he allowed his name to be used freely on the contract without demanding a proper explanation from Lim. Besides this, Julius Kera was not an independent witness. He came to court to give favourable evidence for the Defence, possibly on account of his relationship with Lim and Doehrman as a legal consultant to Quest Investments and Quest Petroleum. I found him to be an evasive and not a credible witness.

E. Evidence of Father Xavier Alphonse

86 Father Xavier was the last defence witness to be called to the stand. With regard to the "compensation" made to Lim for her loss of business, Father Xavier testified that the ITE Trust had not been defrauded. He did not know how the money received by Lim was distributed because it did not concern the ITE Trust.

87 Under cross-examination, Father Xavier confirmed that he was not aware of any plan to distribute US\$3,600,000 to Lim and Doehrman. He did not give his approval for his fellow trustees to receive any part of the US\$3,600,000. Despite claiming that he was very in touch with the ITE Act, Father Xavier stated that only two trustees were enough to make a legally binding decision for the ITE Trust. This was in complete violation of the PNG ITE Act which required a quorum of three.

F. Prosecution's failure to call Somare and Sun Tao as witnesses

88 Counsel for Lim urged the court to draw an adverse inference against the Prosecution for deliberately refusing to obtain any statement from Somare or to produce him as a witness in these proceedings.^[note: 52] They rely on illustration (g) of s 116 of the EA:

The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

Illustrations

The court may presume – (g) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it;...

89 This is a discretionary and not a mandatory inference. (See *Khua Kian Keong v PP* [2003] 4 SLR(R) 526 at [34] ("*Khua Kian Keong*"). The court is generally reluctant to draw this inference against the Prosecution because it is not obliged to act for the defence. (*Khua Kian Keong* at [35]). "The court will not draw an adverse inference against the prosecution for not having calling a witness, where the prosecution has sufficiently proved its case by other independent evidence." (*Mohd Sharif bin Ibrahim v PP* [2002] SGCA 7 at [29]). In any event, strict criteria must be satisfied before an inference may be drawn: (1) the witness that was not called was material; (2) the Prosecution was withholding evidence which it possessed and which was available; and (3) this was done to hinder the Defence. (See *Khua Kian Keong* at [34]). The court would only infer the presence of ill intent when the witness was essential. (*Khua Kian Keong* at [38]). In *Lau Song Seng v PP* [1997] 3 SLR(R) 772 ("*Lau Song Seng*"), the Court of Appeal drew an adverse inference against the Prosecution on the basis that any direct evidence of a conspiracy in that case, if it existed, would only be known to the missing witness in question.

90 Unlike *Lau Song Seng*, the circumstances of the present case did not justify the drawing of an adverse inference against the Prosecution for failing to call Somare to the stand. The Prosecution's case has been sufficiently proved by other independent evidence and Somare's evidence was dispensable. This negated the first and third elements of the test. For the sake of completeness, I should add that the evidence was far from clear that Somare was in Singapore at the material time. Defence exhibit 2D94 is a SingTel Call Details Statement which displays the incoming calls received by the mobile number xxx from 6 April 2011 to 4 May 2011. According to 2D94, the aforesaid mobile number received a call from xxx on 18 April 2011 at 9.46am. This coincided with the period which Doehrman spent at the CPIB recording his fourth statement. However, no evidence has been adduced to prove the identity of the owners of either mobile numbers. Therefore, all three elements of the test stated in *Khua Kian Keong* are not satisfied. In any event, there was nothing to prevent the Defence to call Somare as a defence witness. After all, the accused claimed to know Somare very well and should have no problem in asking him to testify for the Defence. He was characterised as a "longstanding family friend" whom Lim would give US\$784,000 for his personal house-building fund.^[note: 53] But they chose not to call him as a witness.

91 Counsel for Lim also contended that the same adverse inference should be drawn against the Prosecution for failing to call Sun Tao to the stand. It was submitted that Sun Tao was a material witness because he had personal knowledge of the Questzone-ZTE Contract and the Questzone Invoice,^[note: 54] and that the Prosecution could have issued a subpoena to compel Sun Tao to testify as to whether ZTE had been defrauded.^[note: 55]

92 Before I elaborated on this issue, I will briefly describe the organisational structure in ZTE. Shu Liang worked for ZTE (S) Pte Ltd in the Post Sales Department as at June 2010. He reported to Ai Yong Qiang, the Post Sales Director of ZTE (S) Pte Ltd. Ai Yong Qiang was appointed to that position in June 2010 and he reported to Sun Tao then.^[note: 56] Li also reported to Sun Tao.^[note: 57] Sun Tao left his position as the Managing Director of ZTE (S) Pte Ltd in March 2011.^[note: 58] Ai Yong Qiang subsequently reported to Xu Fenglei as the latter was officially appointed as the Managing Director of ZTE (S) Pte Ltd by Zheng Bang in December 2011.^[note: 59] Zheng Bang replaced Cui Yi as the CEO of ZTE Asia Pacific and remained so as at June 2011.^[note: 60] The chain of command in ZTE is depicted below in Table 2.

Year	CEO, ZTE Asia Pacific	Managing Director, ZTE (S) Pte Ltd	Post Sales Director/Project Leader, ZTE (S) Pte Ltd	Post Sales Leader, ZTE (S) Pte Ltd
2010	Cui Yi	Sun Tao	Stephen Li Weiming	Shu Liang (PS11)
2011	Zheng Bang (PS12)	Xu Feng Lei (PW14)	Ai Yong Qiang (PW15)	Shu Liang (PS11)

93 In my view, it was clear that "the Prosecution is not obliged to act for the Defence — as Yong Pung How CJ said in *Chua Keem Long v PP* [1996] 1 SLR(R) 239 (at [77]) :

"The discretion conferred upon the Prosecution cannot be fettered by any obligation to call a particular witness. What the Prosecution has to do is to prove its case. It is not obliged to go out of its way to allow the Defence any opportunity to test its evidence. It is not obliged to act for the defence."

94 In my judgment, I decided against drawing an adverse inference against the Prosecution because Sun Tao's evidence would not be indispensable to its case. The Prosecution has already adduced evidence by the ZTE personnel from 2011, and their testimonies or statements are supported by ZTE's written company

regulations. Although ZTE's Code of Professional Ethics and Conduct for Managerial Cadres (P61) came into being only in 2011, Xu Fenglei testified that the "Forbidden lines" stated in paragraph 3.4 of P61 existed as early as 2004. The relevant forbidden lines are "[d]eliberately falsify invoices or receipts for reimbursement", "take bribes" and "cover up illegal or disorderly conduct". Moreover, ZTE's Regulation of the Handling of Disorderly Conducts (P62) defined "disorderly conduct" as "conduct which ... mainly includes ... asking for or taking kickbacks or seeking other illegitimate gains". Those who were found to have exhibited disorderly conduct would have to face disciplinary action. P62 came into existence as early as 2002. It was also open to the Defence to call Sun Tao as a witness if his evidence was so crucial to their case. I agreed with the Prosecution that "in the absence of any statement recorded from Sun Tao, it is scurrilous for the Defence to obliquely suggest that the Prosecution was withholding evidence."

VI. FINDINGS

A. Section 477A charges

1. The law

95 Prior to trial, the Prosecution had referred four questions of law to the Court of Appeal by way of a criminal reference. One of them was whether the Prosecution could be ordered to provide facts in relation to a *specific* intent to defraud for a charge under s 477A of the *PC* in the summary of facts. The Court of Appeal held that any charge under s 477A may be proven by establishing a *general* intent to defraud (*PP v Li Weiming* [2014] 2 SLR 393 ("*Li Weiming*") at [98]). The corollary principle is that the requisite *mens rea* would not be established if the accused persons were able to put forward a non-fraudulent purpose for the issuance of the invoice (*Li Weiming* at [95]). Relying on *Welham v DPP* [1961] AC 103, counsel for Doehrman in its closing submissions contended that the Prosecution must prove the persons intended to be defrauded.^[note: 61] With respect, I could not agree with counsel. In the first place, I am not bound by an English authority. Our Court of Appeal has also made it abundantly clear that a person may carry out an act with intent to defraud by practising a deception with the aim of obtaining an advantage, "even if he is indifferent as to who the object of his fraudulent intent is" (*Li Weiming* at [84]). As had been submitted by the Prosecution, all the Prosecution needed to do was to prove an intention to defraud "persons generally" or "unknown persons at large" or "whosoever might be called upon to investigate the purported commission payment from ZTE to the accused".

96 As regards the *actus reus* of s 477A, the Court of Appeal stated in *obiter* that a fictitious subcontract simply means that it did not genuinely relate to the stated underlying transaction. (*Li Weiming* at [96]). Counsel for Lim submitted that the Prosecution must prove that the Questzone Invoice belonged to or was in the possession of Lim's employer.^[note: 62] They relied solely on Indian and English authorities to support their proposition. In any event, as was highlighted by the Prosecution, "it is trite that companies take on distinct legal personalities from natural persons associated with them. Questzone Offshore was a distinct legal person from Lim. It is not disputed that Lim was a Director and an officer of Questzone Offshore. Being a director of Questzone Offshore, she had duties towards it. Questzone Offshore was plainly Lim's employer. The falsified invoice in P14 belonged to Lim's employer — Questzone Offshore."

97 The Prosecution must establish the following elements for the offence of abetment by conspiracy: (1) the person abetting must engage, with one or more persons, in a conspiracy; (2) the conspiracy must be for the doing of the thing abetted; and (3) an act or illegal omission must take place in pursuance of the conspiracy in order to the doing of that thing. (*Chai Chien Wei Kelvin v PP* [2000] 3 SLR(R) 619 at [76], followed in *Goh Kah Heng* at [39]). It is also well established that "what is essential is that there must be knowledge of a common design, and it is not necessary that all the co-conspirators should be equally informed as to the details: *Ang Ser Kuang v PP* [1998] 3 SLR(R) 316 (at [30]-[31])." I was also mindful that conspiracy is often proved by the cumulative circumstantial evidence as conspirators mostly agree in private (*Goldring, Timothy Nicholas v PP* [2015] 4 SLR 742 at [47]), and such evidence can be inferred from their words and actions. (*Goh Kah Heng v PP* [2010] 4 SLR 258 at [40]). See also *PP v Yeo Choon Poh* [1993] at [19]-[20].

98 Citing *Bird v O'Neal* [1960] AC 907 ("*Bird*") and *Lai Kam Loy v PP* [1993] 3 SLR(R) 143 ("*Lai Kam Loy*") at [31], counsel for Doehrman contended that the court should not infer the existence of a criminal conspiracy where the evidence can be explained on other grounds. In other words, they submitted that the existence of a conspiracy must be the only possible explanation for the other evidence.^[note: 63] With all due respect, this is an unduly restrictive approach that has no basis at law. *Bird* was a Privy Council decision which concerned the tort of nuisance. Besides the glaring fact that it was a non-binding civil case, the passage which counsel relied upon was merely *obiter dicta*. This can be seen from the excerpt below (*Bird* at 922):

Their Lordships do not consider it necessary or desirable to investigate whether the participation of the appellants Joseph and Samuel in the creation of the nuisance was in pursuance of a previous conspiracy or not. It suffices that they are each responsible for the tort in the commission of which they have assisted.

99 *Bird's* approach is also not reflected in local case law. There is nothing in *Lai Kam Loy* that suggests that the inference of a conspiracy can only be made as a last resort after all other possible explanations are exhausted. The passage in *Lai Kam Loy* cited by counsel merely suggested that it was frequent for the Prosecution to adduce evidence of the parties' words and actions in order to prove a conspiracy among them.

2. The Questzone-ZTE Contract

100 In my view, the Questzone-ZTE Contract (exhibit P3) was clearly a fictitious contract. The Prosecution has established, and the defence witnesses have conceded, that none of the services listed in the contract were ever provided to ZTE. The Questzone-ZTE Contract was deliberately drafted to look like a subcontractor's works contract in order to conceal the true nature of its purpose. It was drafted in the hope that anyone looking at the documents would not realise that the US\$3,600,000 payment from ZTE would be traced to Lim or any of the other intended recipients. This was because all of them were in positions of conflict of interest. Before I elaborated on this, I must stress that the Prosecution was only required to prove a *general* intent to defraud. Therefore, even if ZTE and the ITE Trust were aware of and had approved the US\$3,600,000 payment, the s 477A charge can still stand. I was also mindful that to prove conspiracy, there must be knowledge of a common design but it was not necessary for all the co-conspirators to be equally informed as to the details. See *Ang Ser Kuang v PP* [1998] 3 SLR(R) 316 (at [30]-[31]). In this regard, I found that Doehrman has admitted to being part of a discussion in which Li told Lim Ai Wah that they needed to "create a system for Questzone to invoice" ZTE for the US\$3.6m payment. See [67], [69] and [70] of PS3.

(a) Li's conflict of interest

101 Li should not have received any of the US\$3.6m because he was ZTE's representative in the ITE-ZTE deal. Li was also not supposed to receive money from a subcontractor of ZTE as this was an infringement of the company policy. It will be recalled that "disorderly conduct" was defined as conduct which included asking for or taking kickbacks or seeking other illegitimate gains. Further, Shu Liang told the CPIB that he would not have released payment to Questzone if he knew that it was a shell company. Instead, he would have informed his supervisor about Questzone immediately. Mr Zheng Bang, the ex-CEO of ZTE Asia Pacific, echoed Mr Shu Liang's CPIB statement. If ZTE had known that Li had a share in the \$3,600,000 that was paid to Questzone, ZTE would not have paid Questzone as well. In my view, Li's motive in disguising the commission contract as a works contract was therefore to avoid the appearance of impropriety. This was a crucial component of Li's plan, and Lim clearly shared Li's intention to falsify the Questzone documents. See Notes of Evidence, 23 November 2015 at page 30.

102 In their closing submissions, both defence counsel again sought to rely on what was heard at the alleged meeting on 24 September 2012. Citing the Privy Council's decisions in *Ratten v R* [1972] AC 378 ("*Ratten*") and *Subramaniam v PP* [1956] 1 WLR 965 ("*Subramaniam*"), counsel rightly pointed out that an out-of-court statement may be admitted merely to show that it was made. but not as evidence of the truth of its contents.^[note: 64] I also accepted that the Defence was entitled to rely on Lim and Doehrman's recollection of the meeting^[note: 65] as proof of the fact that they were *told* by Derek Kang that ZTE utilised a works contract to

make payment due to tax purposes.^[note: 66] Nonetheless, there are several reasons why this would not further their case. First, the meeting was held more than two years after the parties entered into the Questzone-ZTE Contract. Whatever transpired at the meeting cannot prove that the accused persons were acting with an honest intent at the material time i.e. June 2010. Second, Derek Kang had no authority to speak on behalf of ZTE; he was merely Li's lawyer and mouthpiece. Even if the meeting had taken place before the Questzone-ZTE Contract was signed, and Derek Kang had been an employee of ZTE so that his words were attributable to ZTE, this statement merely embroiled Derek Kang in the conspiracy. The commission payment remained in violation of ZTE's company policy. Lastly, this defence was likely to be a mere afterthought. Lim and Doehrman's Cases for the Defence did not mention that ZTE wanted the US\$3,600,000 to be documented by the Questzone-ZTE Contract and the Questzone Invoice for "tax purposes".

103 Mr Sheppard's evidence that he heard one Ken Wang saying at the September meeting that ZTE sometimes elected to pay a commission^[note: 67] is inadmissible because his state of mind was neither a fact in issue nor a relevant fact. In my view, the so-called hearsay "exception" in *Ratten* and *Subramaniam* does not apply here.

(b) Doehrman's conflict of interest

104 Just to belabour the point a moment longer, all that the Prosecution was required to prove was a general intent to defraud. I acknowledged that motive is not an element of the s 477A charge here, but a man is more likely to knowingly engage in fraudulent conduct if he has some reason for doing so. In other words, the presence of a motive may bolster the inference that an intention to commit the offence was existent. (*PP v Oh Laye Koh* [1994] 2 SLR(R) 120 at [24]; *Mohammed Ali bin Johari v PP* [2008] 4 SLR(R) 1058 at [55]).

105 In this case, Doehrman had a motive for engaging in a conspiracy to falsify the Questzone Invoice. Indirect evidence established that Doehrman was aware that he was acting in conflict of interest by assisting his wife to receive the US\$3,600,000 payment from ZTE. Doehrman testified that he left a meeting of the ITE Trust on 13 October 2010 after declaring a conflict of interest. This was because he was a shareholder of U-Konekt and he did not want to be part of a discussion which deliberated on whether the ITE Trust should recapitalise U-Konekt.^[note: 68] This showed that Doehrman was personally aware that he should not take part in any decision in the ITE Trust involving other companies where he stood to profit from that decision directly or indirectly.

106 It was possible that Doehrman was unaware of his fiduciary duties prior to the meeting on 13 October 2010, but Lim's evidence will put this theory to rest. She testified that Doehrman helped her with the container sales until he became a trustee of the ITE Trust in November 2008, although she was not entirely sure of his reasons for leaving her business.^[note: 69] I found that it was too much of a coincidence for Doehrman to leave his wife to handle the CC Project on her own at precisely the same time he became a trustee. Doehrman, as a trustee, must have known that he should not be involved in a vendor-supplier relationship with his wife. To drive the final nail into the coffin, Lim testified that Doehrman left the Shangri-la meeting on 8 June 2010 "because he's ITE Trust" ([73] above).

107 In the same vein, Doehrman would have been aware that he was in a position of conflict of interest when he assisted Lim in receiving the US\$3,600,000 payment from ZTE. He would have thought that it was necessary to take steps to avoid the appearance of a conflict of interest. The conflict would be less obvious here, but it will be recalled that ZTE would only pay Questzone after the ITE Trust remitted the US\$3.8 million down payment under the ITE-ZTE Contract to ZTE.

108 The Prosecution offered another line of reasoning to establish Doehrman's motive behind his fraudulent conduct. The argument was that Doehrman was in serious breach of his fiduciary duties towards the ITE Trust and the government and citizens of Papua New Guinea government. It was further contended that he should not have been receiving money from ZTE because that might affect his impartiality in selecting the best available vendor for Phase 2 of the CC Project. Therefore, in order to pre-empt any problems that could arise from conflict of interest situation, Doehrman decided to hide the US \$3.6m payment behind a mask of fraudulent documents.^[note: 70] In response, both defence counsel contended in their closing submissions that the

Prosecution's application of Singapore law on the fiduciary duties of a trustee to Doehrman was flawed and misguided. It was submitted that the Prosecution ought to have tendered evidence of the equivalent law in Papua New Guinea in order to prove Doehrman's conflict of interest.

109 In my view, the foreign law issue is not critical to the Prosecution's case. I agreed with the Prosecution that " Doehrman's and Lim's statements contained several thinly veiled references to the fact that part of the US\$3.6m was meant to use (sic) to bribe PNG parties, including PM Somare and Mox:

PS1 (Doehrman's statement — ruled voluntary)

13. Stephen from ZTE initiated discussions for the commissions (hereforth refers to the 3 parts as stated earlier) for the project. ... I then met Sir Michael and discussed the matter. Sir Michael is fine on the initial discussion on commissions for the project compensation. The agreement was that no one should take more than PM and son combined, there was discussion on compensation to Ai Wah clue to the business opportunity loss as initially we were the ones arranging to source for the equipments for the project. The percentage for PM was 12.5% and his son was 12.5%. It was agreed that compensation to Ai Wah should not be more than the share of the PM or his son. Discussion with Stephen separately also allocated a share to Stephen. ... I am aware that the money to be paid to PM PNG was a form of gift to him by ZTE Corporation so that the operations of the contract would be smooth and that part of the monies would be used to pay PNG officials in the course of their dealings with ZTE Corporation in PNG as and when the officials demand for it.

...

17 The [Questzone Offshore] account was hence solely used as an account to hold and distribute the agreed percentage of payments for the parties involved as part stated in Para 8 as well as to hold the remaining money as contingency monies to ensure that the project goes smoothly. To me, it was an account for off book transactions. For instance, there were PNG government officials who would demand monies from us before they would do their jobs and hence we need to set aside such contingency funds for such demands for monies from government officials and presently demanding for more and more as we are near sign off, in particular one request for up to USD 5 million by Ambassador Dominic Diya which was reduced to USD 1 million.

The money would be paid from Questzone Offshore Standard Chartered's account in Singapore.

PS7 (Lim's statement — ruled voluntary)

8 Sometime in the beginning of 2010, Steven Li met up with me and told me to set up a British Virgin Island (BVI) company as he wanted payments to the PM, PNG as ZTE had given the community college project to ZTE. He also told me that his wife will be setting up a company and he will receive payments through the BVI company. He told me that his bosses did not want to make any payments to Quest Petroleum and wanted a BVI company. I understand that ZTE have to pay the PM, PNG in order to get the work in Papua New Guinea.

...

23 I was asked by the recorder if I know that the money from ZTE deposited into Questzone bank account was proceeds of crime. I wish to say yes but I wish to say that if you don't pay to the PM, PNG you will not be able to get business from Papua New Guinea.

PS2 [Doehrman's statement — voluntariness undisputed]

34 With regards to Paragraph 13, I wish to add that Sir Michael is always looked to help his son, Moox and agreed that Moox to receive commission together with him on this project. It was agreed that Sir Michael and Moox to receive 12.5% of the commission each. I am aware that the part of monies would be use as and when contingency expenses aroused in PNG, given to government officials or private parties, in the course of their dealings with ZTE Corporation in PNG as and when the demand for it was received or else the project stopped, as well as to help PM and Moox to build their homes. This must be put into PNG being the "Land of the Unexpected".

...

36 With regards to Paragraph 17, I wish to add that beside PNG government officials, the contingency monies were also meant for private party(s) who demands monies from us before they would do their jobs. Recently, during my last visit to PNG during the week of 1 March 2011 to 12 March 2011, I had witnessed Ambassador Dominic Diya demanding US\$5 million which was reduced to US\$1 million. Stephen was also present in the meeting when Ambassador Dominic Diya was demanding for the monies."

110 In my view, these were clear references to bribes. When asked about one Dominic Diya who demanded money, Greg Sheppard admitted it was bribery.

111 Finally, both defence counsel submitted that, assuming that Doehrman had been in breach of his fiduciary duties, the other trustees of the ITE Trust had always known and approved of Lim profiting from her container sales, and her compensation in lieu of that same business was likewise not regarded as a conflict of interest. Any alleged conflict of interest had thus been waived.^[note: 71] Given that the Prosecution was able to prove Doehrman's intent to defraud the ITE Trust without relying on the law on fiduciary duties, I need not address counsel's arguments on this point. Moreover, the Defence did not adduce any evidence on the law of waiver in Papua New Guinea. I should also mention in passing that this argument merely implicated the rest of the ITE Trust. I also agreed for the reasons stated in the Prosecution's submissions at pages 53-57 that any "approval" by the ITE Board or its trustees counted for nothing.

(c) Section 169(1)(c) of the CPC

112 Counsel for Lim invited the court to draw an adverse inference against the Prosecution for constantly shifting its case as to what the object of Lim's fraudulent intent was.^[note: 72] They relied on s 169(1)(c) of the CPC which is reproduced in full below:

The court may draw such inference as it thinks fit if —the prosecution or the defence puts forward a case at the trial which differs from or is otherwise inconsistent with the Case for the Prosecution or the Case for the Defence, respectively, that has been filed.

113 According to counsel, the Prosecution's initial case was that ZTE was the object of Lim and Doehrman's alleged intent to defraud. It was submitted that this could be seen from a letter from the Attorney-General's Chambers ("AGC") which stated "there [was] no requirement to name the party the accused persons intended to defraud. In any event, the invoice was addressed to one ZTE Corporation." With respect, I did not agree that the Prosecution confined the object of the fraudulent intention to ZTE in the AGC letter. It appeared to me that the Prosecution merely suggested that Lim and Doehrman could have intended to defraud ZTE, perhaps among other unnamed parties. I found that the "Prosecution's case has always consistently been that Doehrman/Lim had a general intent to defraud persons generally without specifying any particular person or entity." See [31] –[33] of the Prosecution's closing submissions.

114 The Prosecution has in fact maintained the same position throughout the course of the trial. In its reply to the defence counsels' submissions of no case to answer, the Prosecution stated that it would not be "far-fetched ... that Lim and Doehrman might have intended to defraud whomsoever might be called upon to investigate ..." Therefore, no inference may be drawn against the Prosecution under s 169(1)(c) of the CPC.

(d) Lim's case

115 Lim's defence was simply that she was adhering to Li's instructions in order to receive the US\$3,600,000 commission payment. However, there were several gaps in her case.

116 First, it is unthinkable why ZTE, or any other company for that matter, would want to compensate its competitor for beating it to a lucrative contract. In any fair competition between Lim and ZTE for the CC Project, ZTE as an international conglomerate would have beaten Lim hands down as the better vendor. Father Xavier also agreed that ZTE was not only the better choice over Lim for Phase 2 of the CC Project, but "the only choice" because Lim could not carry out Phase 2 of the project even if she wanted to.^[note: 73] Lim explained that she would have continued to work on the CC Project if ZTE had not compensated her, yet her own evidence showed that she was instructed to work on only five more Community Colleges ([47] above). Accordingly, ZTE would not have to pay Lim to take over the CC Project for the remaining Community Colleges.

117 Lim may further contend in rebuttal that, had ZTE chosen not to compensate her, she would have continued to work on the CC Project for the entire Papua New Guinea after she had established the additional five Community Colleges. Still, this argument would likewise gain very little traction. It would suggest that Lim had the ability to influence the ITE Trust to award all the remaining contracts to her. Perhaps this would be made possible by engaging her husband's help in his capacity as a trustee of the ITE Trust. Doehrman would have a reason to help his wife obtain the remaining contracts because it was likely that they would split the profits equally. It was established earlier ([44] above) that Lim and Doehrman shared profits from the container sales between 2008 and 2010, even after Doehrman became a trustee of the ITE Trust in 2008. It is also to be noted that Doehrman held 98.245% of Quest Petroleum's shares, while Lim held a measly 0.255%.^[note: 74] This would adduce yet another piece of evidence to show that Doehrman was in conflict of interest.

118 Counsel for Doehrman contended that ZTE was willing to compensate Lim because Lim had the know-how of the kitted infrastructure industry. This defies commercial sense. ZTE was a "large and sophisticated MNC".^[note: 75] It would not have been difficult to figure out how to replicate the existing Community Colleges. Both defence counsel further submitted that ZTE would not be able to procure the Renhe containers without Lim's assistance because Lim was Renhe's sole authorised agent and had the exclusive right to supply Renhe containers in Papua New Guinea.^[note: 76] However, the letter from Renhe cited to support this does not say "sole authorised agent" or "exclusive right". It only says that "Quest" was "a" Representative Agent of Renhe.^[note: 77] Moreover, the two Chinese companies could have earned a greater profit margin by simply removing Lim from the equation.

119 Second, the timing of the "commission" payment is also questionable. As mentioned earlier ([48] above), it is unlikely that ZTE would pay Lim even before the ITE-ZTE Contract was secured. It was also noted that the ITE-ZTE Contract was conditional upon a US\$35m EXIM loan. Counsel for Doehrman contended in closing submissions that this was because ZTE was competing with Huawei to enter the Papua New Guinean market.^[note: 78] However, this does not explain why ZTE was so eager to pay Lim the commission upfront. The only reason why they might do so would be because Lim had the ability to secure the contract for Phase 2 of the CC Project for ZTE, but that would again suggest that Doehrman was in a position of conflict of interest (see [117] above).

120 Third, the terms of the EXIM loan stipulated that a Chinese company was to be hired for the CC Project ([5] above). As Lim's companies were incorporated either in Singapore or Papua New Guinea, Lim could not be involved in subsequent stages of the CC Project.

121 Fourth, it was highly suspicious as to why ZTE requested to make the commission payment to a BVI company instead of Quest Petroleum or Quest Investments. If the payment was truly made to compensate Lim for the loss of business and goodwill, payment to either Quest Petroleum or Quest Investments would suffice. One possible explanation was that ZTE did not want any direct dealings with the wife of a trustee of the ITE Trust. This account gave credence to Lim's case that she was following ZTE's instructions to incorporate a BVI company. Nevertheless, this merely made Li a party to the conspiracy. It has to be noted that at the material time the negotiation was done by Li purportedly on behalf of ZTE. Ultimately, it was my view that the ITE Trust was still defrauded by Lim and Doehrman acting in concert with Li. The accused persons intended to conceal the US\$3,600,000 payment by way of an elaborate scheme because they were aware that they should not be receiving it. It was to be noted that part of the US\$3,600,000 i.e. US\$2,400,000 were ITE Trust's money paid to Quest Petroleum for the additional 5 Community Colleges. This will be elaborated below.

122 Fifth, the foregoing discussion also raised the question of why Quest Petroleum was involved in ITE Trust's down payment. From Lim's evidence ([47] above), it appeared that she was not entitled to the remainder of the US\$3,000,000 after deducting costs for the Karkar Community College. This was because she did not establish any of the additional five schools. Therefore, she ought to have returned the leftover money to the ITE Trust as soon as it was confirmed that she would be surrendering her business to ZTE. This occurred sometime in March 2010 when Lim accepted Li's offer of 10% compensation.^[note: 79] However, she waited until 8 July 2010 to indirectly repay the ITE Trust through offsetting part of the down payment owed to ZTE. Moreover, even if they had a close commercial relationship, Quest Petroleum need not go so far as to help the ITE Trust save costs (see [67] above). There was also no evidence of any consent by ITE Trust for their monies to be used in this manner.

123 Lastly, assuming that Lim was supposed to receive a legitimate commission payment from ZTE, the fact that she did not personally sign on the Questzone-ZTE Contract was extremely dubious. There was no reason for Lim who was a director of Questzone, to sign on behalf of Julius Kera when she could have easily affixed her signature on the contract without going through the hassle of seeking Julius Kera's permission. Lim even stated in PS9 that Julius Kera had no official position in Questzone. The irresistible conclusion was that Lim was at least aware that she was practicing a deception on the reader of the Questzone-ZTE Contract. Her CPIB statements on this issue were not consistent as well. In PS9, she stated that the Questzone-ZTE Contract was signed by Julius Kera.^[note: 80] However, Lim stated in PS10 that she signed on behalf of Julius Kera with his knowledge and permission.^[note: 81] Clearly Lim was a witness unworthy of credit.

3. *The Questzone Invoice*

124 Since it has been established that the Questzone-ZTE Contract was a fraudulent contract, it follows that the Questzone Invoice was a fraudulent document as well. Lim's involvement in the Questzone Invoice was clear. Lim stated in PS10 that she instructed her sister to prepare the Questzone Invoice and the corresponding cover letter as well. She told her to address the letter to Li and to word it as an "advance payment".

125 Counsel for Doehrman contended that there was no direct evidence of Doehrman's involvement in the creation of the falsified invoices^[note: 82]. In my view, inferences can be drawn from circumstantial evidence to prove his complicity in the making of the Questzone Invoice:

a. Lim knew that she would be paid under the Questzone-ZTE Contract only after ZTE received the advance payment on the ITE-ZTE Contract.^[note: 83] This caused Doehrman to toy with the percentage of the down payment and the inclusion of the satellite cost of \$1,500,000 in the ITE-ZTE Contract to ensure that the down payment exceeded \$3,600,000.^[note: 84] He even had the audacity to say that Li had helped the ITE Trust to reduce the down payment percentage from 20% to 17% when it was increased from 16% to 17% in reality.^[note: 85]

b. Doehrman's presence in a discussion between Lim and Li about the creation of a system for Questzone to invoice ZTE for the US\$3,600,000 payment.^[note: 86] During cross-examination, he said that he was "obviously" aware that Lim and Li needed to create such a system.^[note: 87]

- c. Doehrman's change in position with regard to the signatory of the Questzone-ZTE Contract.^[note: 88]
- d. Lim's CPIB statement that she, Doehrman and Li unanimously decided that she should get a total of US\$950,000 out of the US\$3,600,000.^[note: 89]
- e. Doehrman's practice of taking a cut of the profits of Quest Petroleum and Quest Investments, and that the commission payment should have gone to Quest Petroleum instead of Questzone ([44] above).
- f. Doehrman took steps to remove appearances of conflict of interest ([105] – [106] above).

126 The following facts may be inferred from the strands of evidence above. Doehrman was aware that Lim was to receive a commission payment from ZTE. He knew that the ITE Trust had to pay ZTE more than US\$3,600,000 before Lim could receive a single cent from ZTE. He thus deliberately ensured that the down payment under the ITE-ZTE Contract exceeded US\$3,600,000. All the while, Doehrman was aware that he was acting in conflict of interest. Thus, it was no surprise that he was aware of the creation of a "system" to receive the illicit payment from ZTE, which included using the signature of a lawyer from Papua New Guinea instead of Lim herself and the creation of a BVI company. The creation of the Questzone Invoice was thus a mere administrative procedure in the grand scheme of things. It did not matter that Doehrman was in Vietnam on 15 July when the Questzone Invoice was handed to Li ([75] above). The charge against him was one of abetment by conspiracy and he knew the purpose of these documents.

127 Doehrman's evidence in court was also wholly unconvincing. For one thing, Doehrman was able to say that he did not realise he was implicating his wife after washing his hands off the Questzone documentation and pinning all the responsibility on Lim.^[note: 90] I should mention here that both Lim and Doehrman had actively participated in the discussion with a relationship manager of Standard Chartered Bank in May 2010 to open a corporate account to receive the US\$3,600,000 ([33] above). For another, despite boldly proclaiming that he would do his best and utmost to avoid any situations of conflict,^[note: 91] Doehrman did not excuse himself from the ITE Trust meeting which discussed the 3% fee to be paid to his wife.^[note: 92]

4. Lies & corroboration of guilt

128 The evidence thus far is sufficient to convict Lim and Doehrman of the s 477A charges. There is yet another string to the Prosecution's bow. In *Regina v Lucas (Ruth)* [1981] QB 720 ("*Lucas*"), Lord Lane CJ held at 724 that statements made out of court which are proved or admitted to be false may in certain circumstances amount to corroboration of guilt. Four conditions have to be satisfied: (1) the lie must be deliberate; (2) the lie must relate to a material issue; (3) the motive for the lie must be a realisation of guilt and a fear of the truth; (4) the statement must be clearly shown to be a lie by admission or evidence from an independent witness. The *Lucas* test was cited with approval by the Singapore High Court in *PP v Chee Cheong Hin Constance* [2006] 2 SLR(R) 24 at [92] and *Jagatheesan s/o Krishnasamy v PP* [2006] 4 SLR(R) 45 at [83].

129 There was overwhelming evidence to conclude that Lim and Doehrman made deliberate lies in relation to material issues because of a realisation of guilt and a fear of the truth. This may be seen from their shifting positions on Lim's share of the US\$3,600,000 payment ([50] above); Julius Kera's signature ([54] & [55] above); the US\$850,000 payment to J&M International ([60], [61], [62] & [80] above); the US\$784,000 payment to Somare ([64] & [81] above); Doehrman's conflict of interest ([104] – [107] above); and Doehrman's knowledge of the Questzone Invoice ([125] above). These issues were inextricably linked and the force of the *Lucas* doctrine applies equally to both the s 477A and s 47(1)(b) of the CDSA charges.

130 Even if these lies do not amount to a corroboration of guilt, their patent inconsistencies on these issues are akin to "[pulling] a stone out of an arch: the whole fabric must fall to the ground". (*Nandia v Emperor* AIR 1940 Lahore 457 at 459). While human fallibility in observation and recollection is understandable, their drastic changes in position in relation to material issues led me to render their evidence of little evidential weight. In my view, both the accused persons were clearly not witnesses of credit.

131 In summary, I found that the conspirators (including the accused) used Questzone Offshore to receive the US\$3.6m payment from ZTE, off the back of a false contract (P3) and a false invoice (P14). I was of the view that there was no reasonable explanation for Lim to put Julius Kera's name on P3 and P14. It was clear that this was done so that anyone looking at the documents would not realise that the US\$3.6m payment from ZTE would be traced to Lim, and to any of the other intended recipients (Doehrman, PM Somare, Moox and Li) who were all in conflict of interest.

132 In light of the above findings, I was satisfied that the Prosecution had established beyond a reasonable doubt that Lim and Doehrman engaged in a conspiracy with Li to falsify the Questzone Invoice, a paper belonging to Questzone, wilfully and with intent to defraud. Hence, both the accused persons were respectively found guilty and convicted of the s477A charge.

B. Section 47(1)(b) charges

1. The law

133 The CDSA is an anti-money laundering statute. Section 47(1) criminalises an accused person's laundering of the proceeds of a crime. The *mens rea* of the offence is actual knowledge that the offender is dealing with the benefits of criminal conduct or alternatively, that he has reasonable grounds to believe the same. "Criminal conduct" is defined in s 2 as "doing or being concerned in ... any act constituting a serious offence". "Serious offence" is defined in s 2 as any of the offences specified in the Second Schedule, and an offence under s 477A of the PC has been included as a serious offence since 8 May 2006.

2. Payments made to J&M International

134 The remittance application forms and the telegraphic transfer confirmation letters are objective evidence that US\$750,000 and US\$100,000 were transferred to J&M International on 3 August 2010 and 29 November 2010 respectively. Given that all the money in Questzone's bank account represented benefits from criminal conduct, it was clear to me that the Prosecution had established the s 47(1)(b) charges for Lim and Doehrman beyond a reasonable doubt.

135 J&M International was incorporated to conceal the identity of the true beneficiary of the US\$850,000 payment – Li. Both accused persons admitted in their CPIB statements and during cross-examination that Li was to receive a share of the US\$3,600,000.^[note: 93] Under cross-examination, it became apparent that Lim's defence was a fabricated afterthought. If the money was meant for Li's wife, she ought to have mentioned it in her first statement to the CPIB and in the cautioned statements. Even if Lim had overlooked these errors in her statement, it is incredulous that one would transfer a sum of US\$750,000 to an acquaintance that one had only known for less than six months.

136 Even if we were to accept her case at face value, Lim's case remained externally inconsistent. Lim described the details of the US\$100,000 payment as "out of pocket cost & expenditure from 2008 to present". Notwithstanding that "out of pocket cost" is a far cry from the purported fees for a mining project feasibility study, Lim had testified in court that she first met Li's wife only in 2009.^[note: 94] There would be no need to disguise the telegraphic transfer if Lim was truly minded to pay Catherine Li for their joint ventures.

137 By corroborating his wife's defence with regard to the \$750,000 and \$100,000 payments, Doehrman has indirectly proved his involvement in these transactions. This may also be seen from the Questzone invoices that were never sent out. Lim stated in PS9 that Somare was the recipient of the P15 invoices involving the amounts of US\$280,446.^[note: 95] Crucially, Lim stated that these amounts were worked out by Doehrman, and he had told her to prepare invoices based on them. Her statement is substantiated by Doehrman's statement in PS3 where he explained the calculation of the breakdown of US\$3,600,000.^[note: 96] Under cross-examination, Doehrman agreed that PS3 gave a very clear and detailed description of how the \$3,600,000 was meant to be shared.

3. *Payments made to Somare's bank account*

138 P17 to P19 show that a total of \$784,000 was paid by Questzone to Somare in three instances i.e. US\$280,000 on 16 August 2010, US\$280,000 on 1 September 2010, and US\$224,000 on 12 November 2010. Once again, since all the money in Questzone's bank account represented benefits from criminal conduct, it was clear to me that the Prosecution had established the s 47(1)(b) charges against Lim and Doehrman beyond a reasonable doubt.

139 Lim stated in her first CPIB statement that the monies in the Questzone bank account belonged entirely to Somare, because ZTE had to pay the Prime Minister in order to get the work in Papua New Guinea.^[note: 97] Doehrman similarly stated in his first statement that the money to be paid to Somare was ZTE's gift to him "so that the operations of the contract would be smooth". Later, they characterised the payments to Somare as a housing loan in their subsequent statements.^[note: 98] However, their new position did not tally with the objective evidence. The stubs of the cheques for Somare indicated "Services Rendered" and "Oil search redemption". The irrefutable inference was Lim wanted to hide the true purpose of the payments to Somare; she did not want anyone to suspect the payments. With regard to Doehrman, he had once again indirectly proved his involvement in these transactions by corroborating his wife's defence. During examination-in-chief, Doehrman also stated that the two numbers "280,446", "280,446" in his handwritten post-it notes "[seemed] to be the gifts to the prime minister and his son".^[note: 99] Lim and Doehrman must have realised that their initial position on the payments to Somare did not absolve them of their guilt and thus they amended their position accordingly.

4. *Proforma invoices*

140 Lim and Doehrman also prepared a series of proforma invoices to hide the distribution of proceeds of crime to Li and Somare. These invoices contradicted their explanations that the payments to Somare and Moux were "gifts" and the payments to Li were investments, because every single one of them was described as being "For Services Rendered inclusive of all out-of-pocket costs and expenditure ongoing from year 2008 to present".^[note: 100] Lim admitted in her CPIB statement that Doehrman had asked her to prepare them based on amounts that he had worked out.^[note: 101]

5. *Lim's share of the US\$3,600,000*

141 For completeness, I will briefly consider Lim's defence with regard to her stake in the US\$3,600,000 "commission" payment. Lim's initial position in PS7 was that the money in Questzone's bank account did not belong to her.^[note: 102] She was merely assisting Somare to retain the money in the account.^[note: 103] However, her husband contradicted her statement by stating in PS2 that it was agreed between him, Lim and Li that Lim was to receive US\$600,000.^[note: 104] Doehrman confirmed what he said in PS2 in a separate CPIB statement six months later.^[note: 105] This was also the evidence of Julius Kera during the examination-in-chief.^[note: 106] Lim subsequently disowned her first statement by stating in PS8 that part of the money in the Questzone bank account belonged to her.^[note: 107] Doehrman's handwritten note before the Shenzhen trip in June 2010 (TPD003 of PS3) provided ample objective evidence to establish that Lim had a share in the US\$3,600,000.^[note: 108] He claimed at trial that this note was written sometime at the end of July or August, but he stated in his CPIB statement that he wrote the note sometime between April to June 2010.^[note: 109] Doehrman explained that he wanted to change his evidence "[n]ow that he has had an opportunity to understand things better",^[note: 110] but his recollection of the matter would obviously have been better in 2011 when the statement was recorded. In conclusion, Lim's volte-face threw the credibility of all her evidence into doubt, whether they be made in court or out of court. She must have known that it was wrong to receive the US\$3,600,000 payment from ZTE.

142 In light of the above, I was satisfied beyond a reasonable doubt that both the accused were involved in a conspiracy to move or transfer their ill-gotten monies to their recipients. They were therefore found guilty and convicted of their respective charges,

VII. SENTENCE

A. Sentencing Considerations

143 In my view the main sentencing consideration must be deterrence as the nature of the offences relates to money laundering. This is consistent with the view held in *Ang Jeanette v PP* [2011] 4 SLR 1 at [73], where the High Court said:

Further, against the backdrop of Singapore's significant private banking and asset management sector and its standing as a major international financial centre in the Asia-Pacific region, there is a compelling need to deter would be 'money launderers who want to clean their ill-gotten gains.'

B. Aggravating Factors

144 Both the Prosecution and Defence tendered their respective written submissions on sentence and mitigation. Both the defence counsel submitted for a non-custodial sentence. With due respect, in my view, there were multiple aggravating factors in this case which warranted a custodial sentence. These are stated below.

145 Firstly, Lim and Doehrman displayed a high degree of sophistication in planning and implementing the Questzone scheme. They forged fictitious invoices and made fictitious descriptions in the telegraphic transfers so that each payment would be backed by a document trail that appeared to be legitimate at face value. The Questzone cheque stubs were also falsely described for the payments made to Somare to create a false paper trail. They also used a BVI shell company and signed on the documents with the name of a Papua New Guinean lawyer to distance themselves from the illicit payment of the US\$3,600,000. Doehrman went one step further and took care to use his wife's name in the incorporation of Questzone to conceal his involvement in the scheme. In *PP v Tan Fook Sum* [1999] 2 SLR 523 at [28], the High Court stated that pre-meditation is a relevant aggravating factor:

"It is well established that where an act was done after deliberation and with premeditation as opposed to the situation where it is done on the spur of the moment and "in hot blood", that is an aggravating factor, and not a mitigating factor."

146 The ITE Trust was founded with the aim of including the excluded by providing accessible education to students in rural areas. What the accused persons have done was to take a significant cut of the public funds in the ITE Trust for pure personal gains. Out of the US\$3,600,000, they expected to receive a total of US\$950,000. A total of US\$850,000 had also been transferred out of jurisdiction to J&M International. After disbursement of US\$1,634,000 to Stephen Li and Somare, the Questzone bank account retained US\$1,972,807.54. The amount involved was therefore significant. Questzone was set up by Lim solely to facilitate the commission of the offences.

147 As a Trustee of ITE Trust, Doehrman had abused the trust reposed in him by, among other things, authorised the initial payment made by ITE Trust to ZTE knowing that the monies were required by ZTE before they would make the US\$3.6m payment to Questzone and also conspired to make unlawful payment to Li and Somare. As a matter of fact, both the accused admitted in their statements that payments had to be made to the then-PM Somare in order 'to get business from PNG' and to ensure that 'the operations of the contract would be smooth and that part of the monies would be used to pay PNG officials...' These show clearly that the payments made to Somare were corrupt. Clearly it was also unlawful for Li to receive the payments as he was the appointed representative of ZTE in PNG and was responsible for finalising the contract between ZTE and ITE Trust. There was also no evidence that he made any such declaration to his employer about the payment to the company set up by his wife.

148 Lastly, the Questzone Invoice was not created to resolve accounting problems. It was an essential element of an elaborate cross-border criminal scheme to receive an illicit US\$3,600,000 payment. Without doubt the cross-border scheme also made the offences difficult to detect.

C. Mitigating Factors

149 Counsel for Doehrman submitted the following key mitigating circumstances. It was highlighted that there was no victim and no loss. Similar submission was also made by counsel on behalf of Lim. With due respect, I disagreed. How can there be no loss or no victim when unlawful payments were made to Li or the company set up by his wife and to Somare? Monies were also received by Lim when her husband Doehrman was in a position of conflict.

150 Next, counsel contended that there was no or limited involvement by Doehrman in the commission of the offences. Similar submission was also canvassed by counsel on behalf of Lim on the role played by her. This will be discussed at below.

151 Counsel also urged the court to bear in mind the personal circumstances of Doehrman. It was submitted that he was a man of good character with a clean and unblemished record. The Prosecution urged the court not to rely on the character evidence given by Julius Kera and Fr Xavier. I agreed that Julius Kera did not appear to be a credible witness as he was sacked from U-Konekt for having committed criminal breach of trust. Moreover, as a lawyer, he appeared to have a cavalier attitude in allowing his name to be used by Lim without conducting his own check. As for Fr Xavier, by virtue of his vocation, I think he deserved some respect. In the circumstances, I would accord some weight on account of Doehrman's good character. It was also highlighted that he had assisted the authorities in their investigations.

152 I also noted that Doehrman is now 68 years old and suffers from ill health which will most likely be aggravated by the conditions of prison environment. As a matter of fact, during his remand in prison, he was certified to be unfit to attend court on 2 occasions. His medical condition and age would certainly be relevant considerations in determining the appropriate sentence to be passed. See *Idya Nurhazlyn bte Ahmad Khir v PP* [2014] 1 SLR 756 and *Tan Kim Hock Anthony v PP* and another [2014] 2 SLR 795 at [40]. I must add that I was mindful that no medical report had been submitted by the accused as to the impact of prison environment on his medical condition.

153 Counsel for Lim highlighted that Lim was a first-time offender. She was said to have a right bundle branch block in her heart accordingly to a medical examination done in 2011. But there was no recent medical report or any recent medical report tendered to show how she would be affected by a term of imprisonment. Hence, it would not be appropriate to take her medical condition into account in sentencing.

154 Both the accused also alleged that this was a one-off transaction. With due respect, this must be balanced against the deliberate and elaborate fraudulent scheme hatched by the accused.

155 In considering the sentence I took favourably into account both the accused's contributions to charitable work in PNG.

156 Bearing in mind the main sentencing consideration of deterrence and all the aggravating and mitigating factors, I proceeded to assess the appropriate sentences to be meted out for the s477A charges and the s47(1) (b) CDSA charges.

D. Section 477A charges

157 The punishment for an offence under s 477A of the *PC* is imprisonment up to 10 years, or with fine, or with both.

158 All the parties have submitted for my consideration various sentencing precedents. They provide useful guidelines but ultimately, it is the circumstances of each case including the nature of the offence and public interest which should determine the appropriate sentence. See *Dinesh Singh Bhatia s/o Amarjeet Singh v PP* [20-05] 3 SLR (R) 1at [24].

159 In *Phang Wah v PP* [2012] 1 SLR 646 , Phang and his wife, Neo, were convicted of six counts of falsification of documents and other charges in relation to the multi-level marketing business of Sunshine Empire Pte Ltd. Phang and Neo falsified six payment vouchers in order to reduce Neo's income tax liability and to avoid Phang's embarrassment in having a low income. They did not attempt to conceal the purpose of falsifying the vouchers from the staff in the company's accounting department, and they had not avoided declaring the whole amount of income. However, it was likely that the falsification of payment vouchers would have continued if the CAD had not intervened. In the circumstances, the High Court upheld the District Judge's sentence of \$10,000 on each of the six s 477A charges. The precise quantum of the defrauded income tax was not stated. The other charges involved s340 of the Companies Act ("the s340 charge" and eight s409 charges read with s109 of the Penal Code ("the s409 charges"). Phang was sentenced to 4 years and 6 months for the s340 charge. With regard to the s409 charges, Phang was imprisoned for terms ranging from 15 to 30 months. Phang was sentenced by the High Court to a total of 9 years' imprisonment and an aggregate fine of \$60,000 despite the submission by Phang that there was no loss suffered by the participants of the Sunshine Empire scheme and that no complaint or law suit has been filed against the Sunshine Empire claiming wrongful loss or damages.

160 In *Goh Kah Heng (alias Shi Ming Yi) v PP* [2010] 4 SLR 258, the first appellant, Shi, was sentenced to 6 months' imprisonment for one count of falsification of documents, 4 months' imprisonment for one count of criminal breach of trust, and 4 months' and 2 months' imprisonment for two counts of providing false information to the Commissioner of Charities respectively. The falsehood in the s 477A offence is found in the description of Ren Ci Hospital's payment voucher; it was intended to mask an illicit loan of \$50,000 to Shi's personal executive. The sentences for the first and third charges were ordered to run consecutively for a global sentence of 10 months' imprisonment. The High Court noted that misuse of funds in a charitable organisation was a serious offence and that the amount involved was not a small one. Restitution was made but only after investigations commenced. However, the court also found that the sentencing judge accorded too little weight to Shi's contributions to society. The aggregate sentence was accordingly lowered to 6 months' imprisonment.

161 In *Tan Puay Boon v PP* [2003] 3 SLR(R) 390 ("*Tan Puay Boon*"), the appellant was convicted of eight counts of falsification of documents. She joined the company as a clerk and submitted false salary rolls and payment vouchers for personal gains. The District Court sentenced her to 18, 12 and 6 months' imprisonment for Charges E, F and G respectively and 3 months' imprisonment for the remaining five charges. The sentences for the first three charges were ordered to run consecutively; the others were to run concurrently with the sentence for Charge E. The amounts involved were as follows:

Charge Number(s)	Amounts	Imprisonment Term
A & B	\$2,511.00	3 months
C	\$2,473.90	3 months
D	\$3,531.50	3 months
E	\$22,000.00	18 months
F	\$11,000.00	12 months
G	\$4,719.05	6 months
H	\$2,500.00	3 months

162 The High Court in *Tan Puay Boon* noted that the trial judge had given graduated jail terms corresponding to the amount of money siphoned from the company. It held that two sentencing factors were to be considered for a charge under s 477A: (1) whether there was deviousness or surreptitious planning; and (2) whether the falsifications were committed for one's personal gain. On the facts, the court found a sophisticated scheme to deceive and that the appellant's acts were clearly motivated by personal pecuniary gain. (*Tan Puay Boon* at [49]). Moreover, the abuse of the appellant's supervisor's trust was an aggravating factor. Accordingly, the court upheld the aggregate sentence of 36 months' imprisonment.

163 In *Chew Soo Chun v PP* [2016] 2 SLR 78, there were 5 s477A charges, 4 charges pertained to falsification of pro-forma invoices so as to artificially boost the sales revenue records of the company. The fifth charge was for the falsification of company accounts to reflect a payment to a third party which was not made. These falsifications related to amounts between \$20,000 and \$298,050. The sentences passed for these charges ranged from 12 months to 18 months. The defendant was also convicted of 5 other charges. The global sentence meted out was 32 months' imprisonment and a \$10,000 fine.

164 In *PP v Lam Leng Hung and others* [2015] SGDC 327, the sentences for each of the 4 co-accused convicted of s477A offence were 2 or 3 months per charge. They were also convicted of other charges. The total value of the proceeded charges was about S\$48.13m. It is to be noted that the case is currently on appeal to the High Court.

165 The precedents did not reveal a strong correlation between the quantum of money deceived and the length of the custodial sentence. This is understandable as the factual matrix and the level of criminality of each s 477A charge vary greatly and the court must scrutinise each and every aggravating and mitigating factors carefully. In this regard, I found there were various distinguishable facts in the present case.

166 The Questzone Invoice pertained to an amount of US\$3,600,000. As stated in [145] above, there was clearly deviousness or surreptitious planning involved and the falsifications were undeniably committed for Lim and Doehrman's personal gains. They admitted that they intended to use the Questzone funds for their new home in Singapore. Part of the ill-gotten monies were also used to bribe PNG politician and officials. Doehrman's flagrant and repeated breaches of fiduciary duties as a trustee of the ITE Trust made him more culpable than Lim in this criminal enterprise. I agreed with the Prosecution that "Doehrman had the technical knowledge and the relationships with Li Weiming ("Li") and Somare. Under the cloak of purported charitable good works, Doehrman got himself appointed as an "independent" consultant to Somare and a Trustee of the Trust, and was instrumental in Quest Petroleum acquiring the self-advancing business of supplying containerized classrooms to the Trust, and reached an agreement with Li on securing the corrupt payment of US\$3.6m from ZTE. Thirdly, his own handwritten evidence shows that Doehrman, Lim and Li determined the distribution of part of the US\$3.6m to Doehrman and Lim, Li and Somare. Lim was either a pawn acting on instructions of her husband or, at its highest, an equal partner who participated in every aspect of the criminal scheme devised by Doehrman." With due respect, I therefore disagreed that Doehrman had no or limited involvement in the commission of the offences or that he was not the mastermind or architect. In my view, Doehrman was clearly more culpable than Lim.

167 In the circumstances, for the s477A charge faced by each of the accused persons, I sentenced Doehrman to 30 months' imprisonment (DAC26705/2012). As for Lim, I sentenced her to 20 months' imprisonment (DAC26699/2012).

E. Section 47(1)(b) charges

168 Section 47(6) of the *CDSA* provides that the punishment for an offence under s 47(1) of the *CDSA* is a fine up to \$500,000, or imprisonment up to 7 years, or with both.

169 In considering the sentences for the s47(1)(b) *CDSA* offences, I also noted the seriousness of the predicate offence and that both the accused had actual knowledge that the monies were benefits of their criminal conduct. They were in fact the principal offenders and not mere money mules.

170 Based on the precedents submitted by the parties it appeared that the cases show generally that the amount involved in the transfer was positively correlated with the duration of the imprisonment term. The sentences will therefore be calibrated accordingly and taking into account the culpability of each of the accused persons.

171 For Lim, the sentences were as follows:

18 months imprisonment for DAC 26704/2012

30 months imprisonment for DAC 26703/2012

30 months imprisonment for DAC 26701/2012

30 months imprisonment for DAC 26702/2012

40 months imprisonment for DAC 26700/2012

172 For Doehrman, the sentences were as follows:

18 months imprisonment for DAC 26710/2012

30 months imprisonment for DAC26709/2012

30 months imprisonment for DAC 26708/2012

30 months imprisonment for DAC 26707/2012

40 months imprisonment for DAC 26706/2012

VIII. Conclusion

173 Having determined the sentence for each of the individual offences and bearing in mind the one-transaction rule and the totality principle, I proceeded to consider which of the sentences were to run consecutively. See Mohamed Shouffee bin Adam v PP [2014] 2 SLR 998. I agreed with the defence that all the CDSA charges emanated from the s477A charge and that they were all part of the same transaction. But in compliance with s307(1) of the CPC, 2 of the sentences must be ordered to run consecutively.

174 In the circumstances including the fact that no restitution had been made and considering the criminality of the accused persons, I ordered the sentence in DAC 26699/2012 (20 months' imprisonment) to run consecutively with the sentence in DAC 26700/2012 (40 months' imprisonment) for Lim. As for Doehrman, I ordered the sentences in DAC 26705/2012 (30 months' imprisonment) and DAC 26706/2012 (40 months' imprisonment) to run consecutively. The rest of the sentences were to run concurrently. The total sentence will be 60 months' imprisonment for Lim and 70 months' imprisonment for Doehrman. The sentence for Doehrman was to commence from 22 July 2016 which was the date of his remand. He was remanded as he was unable to furnish bail.

DATE	EVENT
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26/11/2008	· Setting up of the ITE Trust
26/2/2010	· Incorporation of Questzone Offshore Limited (P6A)
18/3/2010	· ITE Trust transferred SGD\$4,263,459 to Quest Petroleum (Payment for order to establish an additional five CCs) (1D44)
4/5/2010	· Lim & her sister were appointed as directors of Questzone (P6C/F) · Lim was issued 1 share of Questzone (P6F)
8/6/2010	· Signing of the Questzone-ZTE Contract (P3) · Signing of the ITE-ZTE Contract (P40)
23/6/2010	· ZTE hired U-Konekt as its subcontractor (UK-ZTE Contract) (P27)
8/7/2010	· Quest Petroleum transferred US\$2,400,000 to ZTE Corporation (Part payment for down payment of ITE-ZTE Contract) (2D58) · Letter from the ITE Trust to Young & Williams Lawyers – instructions to send US\$1,414,065 to ZTE (2D61) · (Total: US\$3,814,065)
15/7/2010	· Questzone invoiced ZTE for US\$3,600,000 (P13 & P14)
28/7/2010	· Letter from PNG Treasury Dept to EXIM Bank China – “The ITE Trust has executed contract documents with ZTE ...” (2D64)
30/7/2010	· Questzone received US\$3,600,000 from ZTE (P32)
3/8/2010 – 29/11/2010	· Questzone sent \$850,000 to J&M Intl and \$784,000 to Somare
31/8/2010	· ITE Trust entered into Frame contract with ZTE for US\$38,814,065 on 31 August 2010 (P24)
7/3/2011	· Letter from PNG Treasury Dept to Ambassador Qiu – “This is to confirm that we received the invitation from China Eximbank to execute the loan agreements ... on 17 March 2011”. (2D73)
15/3/2011	· CPIB arrested Lim and Doehrman
16/5/2011	· Letter from EXIM Bank to PNG Treasury Dept – “Pursuant to Article 9 of the Government Concessional Loan agreement ... dated March 17 th 2011 ... we hereby inform you that ... The Agreement shall become effective on and from the date hereof”. (2D74)

[note: 1]“ITE” stands for “Including the Excluded”. See PS7 at para 4.

[note: 2]Prosecution Exhibit P23.

[note: 3]Prosecution Exhibit P40.

[note: 4]Prosecution Exhibit P24.

[note: 5]Notes of Evidence, 10 March 2015 at page 54.

- [note: 6]Lim's Closing Submissions at para 90.
- [note: 7]Notes of Evidence, 5 March 2015 at pages 71 – 72.
- [note: 8]Doehrman's Closing Submissions at para 114.
- [note: 9]Notes of Evidence, 11 March 2015 at page 120.
- [note: 10]Notes of Evidence, 3 June 2015 at page 90.
- [note: 11]Lim's Closing Submissions, para 66 – 71.
- [note: 12]Notes of Evidence, 12 March 2015 at page 104.
- [note: 13]Notes of Evidence, 12 March 2015 at page 105.
- [note: 14]Notes of Evidence, 12 March 2015 at page 119.
- [note: 15]Notes of Evidence, 5 June 2015 at page 8.
- [note: 16]Notes of Evidence, 5 June 2015 at pages 13-16.
- [note: 17]Doehrman's Closing Submissions at para 163(c).
- [note: 18]Notes of Evidence, 9 June 2015 at pages 58 – 59.
- [note: 19]Notes of Evidence, 8 June 2015 at page 108.
- [note: 20]Notes of Evidence, 8 June 2015 at pages 112 – 113.
- [note: 21]Notes of Evidence, 8 June 2015 at page 114.
- [note: 22]Notes of Evidence, 8 June 2015 at page 115.
- [note: 23]Notes of Evidence, 12 June 2015 at page 18.
- [note: 24]Notes of Evidence, 12 June 2015 at pages 19 – 21.
- [note: 25]Notes of Evidence, 12 June 2015 at page 39.
- [note: 26]Notes of Evidence, 12 June 2015 at pages 38 – 39.
- [note: 27]Notes of Evidence, 12 June 2015 at pages 20 – 21.
- [note: 28]Notes of Evidence, 27 October 2015 at pages 41 – 42.
- [note: 29]Notes of Evidence, 27 October 2015 at page 76.
- [note: 30]Notes of Evidence, 27 October 2015 at page 76.
- [note: 31]Notes of Evidence, 29 October 2015 at pages 108 – 109.
- [note: 32]Notes of Evidence, 28 October 2015 at page 104.
- [note: 33]Notes of Evidence, 27 October 2015 at pages 66 – 67.
- [note: 34]Notes of Evidence, 27 October 2015 at pages 69 – 70.
- [note: 35]Notes of Evidence, 27 October 2015 at page 77.
- [note: 36]Notes of Evidence, 27 October 2015 at page 42.
- [note: 37]Notes of Evidence, 27 October 2015 at page 44.
- [note: 38]Notes of Evidence, 27 October 2015 at page 89.
- [note: 39]Notes of Evidence, 29 October 2015 at page 10.
- [note: 40]Notes of Evidence, 27 October 2015 at page 80.
- [note: 41]Notes of Evidence, 27 October 2015 at page 99.
- [note: 42]Notes of Evidence, 28 October 2015 at page 15.

[note: 43]Notes of Evidence on 28 October 2015 at pages 95, 98 & 100; Defence exhibits 1D18 – 1D43.

[note: 44]Notes of Evidence, 24 November 2015 at pages 37, 55 & 71.

[note: 45]Notes of Evidence, 24 November 2015 at page 82.

[note: 46]Notes of Evidence, 24 November 2015 at page 82.

[note: 47]Notes of Evidence, 27 October 2015 at page 99.

[note: 48]Notes of Evidence, 26 November 2015 at page 25.

[note: 49]Notes of Evidence, 26 November 2015 at page 87.

[note: 50]Notes of Evidence, 22 March 2016 at page 79.

[note: 51]Notes of Evidence, 22 March 2016 at pages 19 – 20.

[note: 52]Lim's Closing Submissions at para 58,

[note: 53]Notes of Evidence, 27 October 2015 at page 141.

[note: 54]Lim's Closing Submissions at para 59.

[note: 55]Lim's Closing Submissions at para 60.

[note: 56]Notes of Evidence, 12 June 2015 at page 3.

[note: 57]Notes of Evidence, 12 June 2015 at page 45.

[note: 58]Notes of Evidence, 10 June 2015 at page 10.

[note: 59]Notes of Evidence, 10 June 2015 at page 9; Notes of Evidence, 12 June 2015 at page 3.

[note: 60]PS12 at [2].

[note: 61]Doehrman's Closing Submissions at para 71.

[note: 62]Lim's Closing Submissions at para 98.

[note: 63]Doehrman's Closing Submissions at paras 85 – 88.

[note: 64]Doehrman's Closing Submissions at paras 89 – 97; Lim's Closing Submissions at para 148.

[note: 65]Notes of Evidence, 28 October 2015 at page 16; 24 November 2015 at pages 69 – 70.

[note: 66]Doehrman's Closing Submissions at para 341.

[note: 67]Notes of Evidence, 15 March 2016 at pages 31 & 33.

[note: 68]Notes of Evidence, 25 November 2015 at page 161.

[note: 69]Notes of Evidence, 28 October 2015 at pages 101 – 102.

[note: 70]Prosecution Closing Submissions at [78] and [79].

[note: 71]Lim's Closing Submissions at para 226; Doehrman's Closing Submissions at para 326(f).

[note: 72]Lim's Closing Submissions at para 51.

[note: 73]Notes of Evidence, 23 May 2016 at page 125.

[note: 74]1D7.

[note: 75]Doehrman's Closing Submissions at para 350.

[note: 76]Lim's Closing Submissions at para 128; Doehrman's Closing Submissions at para 199.

[note: 77]1D16.

[note: 78]Doehrman's Closing Submissions at para 303 – 304.

[note: 79]Notes of Evidence, 27 October 2015 at page 79.