

IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION

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PRESS SUMMARY

HKSAR

v

LAI CHEE YING (D1)

WONG WAI KEUNG (D3)

Criminal Case No 349/2021

[2022] HKDC 1462

Before: HH Judge Stanley Chan

Date of sentence: 10 December 2022

Present : — Ms Maggie Yang, DPP & Ms Karen Ng, SPP, for
HKSAR
— Ms Olivia Tsang, Mr Tung Ho Chit Ernie & Ms
Tinny Chan, instructed by Messrs Robertsons, for
the 1st defendant
— Ms Wong Maggie P.K., SC, leading Mr Leung
Y.M. Ronny, Mr Ngai Jun Joshua & Ms Lau T.Y.
Rachel, instructed by Messrs Robertsons, for the 3rd
defendant

Offences : [1] Fraud (欺詐罪) - D1

[2] Fraud (欺詐罪) - D1 & D3

- Sentence: — D1: –
- (1) 5 years and 9 months' imprisonment;
 - (2) Disqualified as a director for 8 years pursuant to s.168E of the Companies Ordinance, Cap. 32; and
 - (3) Fine of HKD2,000,000
- D3 – 21 months' imprisonment

The Charges

1. D1 Lai was charged with 2 counts of Fraud, contrary to section 16A of the Theft Ordinance, Cap 210 and D3 was jointly charged with D1 with the offence of Fraud. The period of offence of Charge 1 was from 1 April 1998 to 31 December 2015 while that of Charge 2 was from 1 January 2016 to 19 May 2020.

The Prosecution case

2. The property involved was the premises at No. 8 Chun Ying Street, Tseung Kwan O Industrial Estate, Tseung Kwan O [No.8 premises] with Hong Kong Industrial Estates Corporation (HKIEC) [later known as Hong Kong Science and Technology Parks Corporation (HKSTPC) since 2001] as the grantor/ lessor and Next Media Printing Ltd (later known as Apple Daily Printing Ltd [ADPL] as grantee/lessee of No.8 premises.

3. In August 1995, Maxhope Ltd submitted an application to HKIEC for a tenancy of an industrial site at Tseung Kwan O Industrial Estate. The application was signed by D1 as the chairman of Maxhope

which became a wholly owned subsidiary of Next Digital Group at a later stage. The application was submitted on the basis that the premises would be specifically used for publishing and printing of newspapers and magazines.

4. Dico Consultants Ltd [Dico] was a private company incorporated in Hong Kong in 1988. D1 was one of the directors of Dico and owned 50% of its shareholding all along, while the remaining 50% was held by various persons at different stages on trust for D1. The nature of business of Dico was consultancy and management. It transpired that Dico has been providing company secretarial services to more than 20 companies since June 2016.

5. Prior to the signing of the lease between HKIEC and ADPL in 1999, both ADPL and Disco changed its registration address to No.8 premises in January 1998 and April 1998 respectively. Subsequently, an agreement for lease was entered between ADPL and HKIEC in October 1995. In May 1999, ADPL entered a lease with HKIEC. The lease stipulated clearly the restrictions of the use and the lease which provided that the premises be used for specified purposes as permitted under the lease, namely, the publishing and printing of newspapers and magazines using the prescribed manufacturing processes as described in the lessee's application and supporting schedules.

6. The lease contains 'no alienation clause' whereby the lessee was not allowed to assign, mortgage, charge, demise, underlet or part with the possession of the premises or any part thereof, nor to permit any other party by way of a licence to occupy the said premises or any part thereof.

However, the lessee was allowed, subject to prior written approval of the lessor, namely HKIEC / HKSTPC, to permit a subsidiary or an associate company of the lessee to occupy or share with the lessee the use of part of (but not the whole thereof) the said premises by way of licence, on such terms, for such duration and in such form as may be approved by HKIEC/HKSTPC.

7. At the material time, D1 was the chairman and shareholder of the respective companies. ADPL was a private company incorporated in Hong Kong in July 1995, and it became wholly owned by Next Digital Ltd, a listed company in Hong Kong since 2001. D1 was the majority shareholder of Next Digital and was the chairman from 1999 to 2014, and from 2018 afterwards. D1 was one of the directors of ADPL between 1995 and 2014.

8. D3 was the Director of Administration of Next Media Management Services Ltd [NMMS], a subsidiary of Next Digital. He also dealt with certain matters relating to Dico and had used the email address <wkwong@dicocosultants.com>.

9. The evidence showed that since April 1998, Dico occupied certain area on 1/F of No. 8 premises and later moved to 4/F of the same building. Dico occupied Room 429 and 430 until it's actual office was vacated in May 2020.

10. Between October 1995 and February 2011, Dico never applied for a licence to occupy part of No.8 premises, nor did ADPL made

such an application for Disco. HKIEC and HKSTPC never received any application for such a licence.

11. The Prosecution alleged that all along Dico was D1's private company and could not satisfy the conditions as a licensee under the special lease. It transpired that Dico managed vehicles and 3 vessels used by D1. Dico also managed D1's residence at Kadoorie Avenue and made donations to various persons or bodies. The company also handled certain businesses in Taiwan and attended to matters relating to D1's residence abroad. Dico also purchased Art works for D1. Dico signed the lease of D1's residence at one stage and employed over 30 staff members at various stages, including drivers, domestic maids, vessel captains and accounting staff. Dico's capital and financial resources were provided solely by D1.

12. On the other hand, it was shown that in 1997, ADPL had made licence applications for 10 companies which were all approved. D1 signed some of the statutory declarations. In 1999, 12 licence applications or renewal of licence were approved and D1 signed some of the statutory declarations and/or undertakings. In 2001, 8 more licence applications were approved and in 2003, 6 were approved. In 2006, D3 applied for 11 licences or renewal of licence on behalf of ADPL and all applications were approved. In 2010, 2 licence applications were approved. In 2012, 11 licence applications or renewals were approved. In 2016, D3 made 7 licence applications or renewal of licence on behalf of ADPL. In 2018, D3 made one licence application and another application was made in the latter part of the year. In 2019, there were 5 licence applications.

13. On 13 March 2020, the incident was unearthed by an internet news agency and enquiry was made. On 23 March 2020, Dico's registered address was changed to an address in Wanchai.

14. In addition, upon seeking legal advice from the group's legal adviser and a lawyer from a solicitors' firm and with the approval of PW6, D3 made a written reply to HKSTPC on 9 April 2020 saying, inter alia, that "Dico does not occupy and is not operating on any part of the Lot."

15. In May 2020, Dico's actual office was moved from No.8 premises to an office premises in Kwun Tong.

16. Both D1 and D3 were arrested in August 2020, and they were convicted after trial on 25 October 2022. The Court called for the background report of D1 and D3 and the sentence was adjourned to today, 10 December.

Mitigation

17. Mitigation bundle was prepared by Counsel for D1 and D3 respectively. There was virtually no mitigation from D1 but the Defence urged the court that certain discount should be given as a substantial part of the Prosecution case was agreed, and that saved a lot of public resources. The background report of D1 stated that D1 claimed that he should not be responsible for this breach of lease as he was not personally involved in the daily administration of the Group. In D1's view, the blame should go to the Chief Operating Officer.

18. D3's counsel in her 11-page mitigation submission said D3 was just executing orders or decisions made by his seniors. He was not the decision maker. The Defence submitted a total of 19 mitigation letters including those from his wife and daughter. D3 was and is suffering from various illness and he has profound hearing loss. The Defence said there is no chance for D3 to reoffend and urge the Court to pass a lenient sentence.

Factors to be considered for sentencing purpose

19. There is no sentencing guideline for s.16A Fraud offence but the maximum sentence is imprisonment for 14 years.

20. The Court takes the view that as far as D1 is concerned, there are various aggravating factors in this case, even though the fraud scheme was not sophisticated. The aggravating factors are as follows –

- (1) The period of offence for both charges spanned from April 1998 to May 2020, a total of some 21 years. D1 was involved all along, and from January 2016, D3 also participated in the scam.
- (2) Dico inevitably enjoyed cheaper rent and administrative convenience. There was security of the period of tenancy. These intangible benefits cannot be quantified in the expert reports.
- (3) The arrangement will result in D'1 personal benefits, especially in the taxation perspective.
- (4) D1 made use of his media conglomerate and his Group's premises at No.8 premises to accommodate

and shelter his private company Dico. With D1's social status and reputation, HKSTPC would be slow or would face huge pressure to take actions against D1's media group.

- (5) D1 did not commit the offence alone. The scam was committed with the assistance of other people, including those senior officials at various stages. This scam was perpetrated over a long period of time.
- (6) There were a total of 9 site inspections by HKSTPC staff during the period from 2011 to 2015 and the existence of Dico and its office in No.8 premises was never revealed. The name of Dico was not shown in the directory of the premises. PW4 made 6 site inspections between 2015 and 2019. That was a deliberate act of concealment, especially when HKSTPC relied on the lessee to provide truthful information to them.

21. D3 cannot exonerate his criminal liability as from January 2016 he was personally involved in the administration of No.8 premises, and he had made many licence applications and/or renewal of the licence to HKSTPC. He was fully aware of the existence of Dico. When HKSTPC made an enquiry of the possible breach of the lease, D3, upon legal advice and direction of his senior, made a reply to conceal the fact that Disco had been occupying part of No.8 premises.

Sentence

D1 Lai Chee-ying

- (1) For Charge 1, he was sentenced to 5 years
- (2) For Charge 2, he was sentenced to 3 years, with one year consecutive to the sentence of Charge 1, making it a total of 6 years. However, to be fair to D1 as he had agreed to a large part of the Prosecution case, a discount of 3 months was granted. Accordingly, D1 was sentenced to an imprisonment term of 5 years and 9 months.
- (3) A Disqualification Order of 8 years under s.168E of the Companies (Winding Up and Miscellaneous Provisions) Ordinance Cap 32 was made.
- (4) D1 was fined a total of HK \$ 2 million, to be paid in 3 months and if in default, to serve an additional term of 12 months' imprisonment.

D3 Wong Wai-keung

22. He was only involved in Charge 2. D3's role was different from that of D1. A starting point of 2 ½ years [30 months] was adopted. The Court took a lenient view and reduced the sentence by 9 months for various mitigating grounds. As such, D3 was sentenced to a term of 21 months' imprisonment.