

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 131/2023
[2024] NZSC 27

BETWEEN HENGJIA ZHENG
Applicant

AND THE KING
Respondent

Court: Glazebrook, Ellen France and Miller JJ

Counsel: P E Dacre KC and R L Thomson for Applicant
P F Wicks KC and K E Hogan for Respondent

Judgment: 10 April 2024

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

Introduction

[1] Mr Hengjia (Joe) Zheng was convicted, after a judge-alone trial before Gault J, of the following offence under the Serious Fraud Office Act 1990:¹

45 Offence to obstruct investigation, etc

Every person commits an offence, and is liable on conviction [who],—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$15,000:

...

(e) in the course of complying with any requirement imposed pursuant to section 5 or section 9, gives an answer to any question, or supplies

¹ *R v Zhang* [2022] NZHC 2540 (Gault J) at [8].

any information, or produces any document, or provides any explanation, knowing that it is false or misleading in a material particular or being reckless as to whether it is so false or misleading.

[2] Mr Zheng's appeal against conviction on that charge was dismissed by the Court of Appeal.² He now applies for leave to appeal to this Court.

Background

[3] In sentencing, Gault J set the facts out as follows:³

[25] Turning to the facts relevant to Mr Joe Zheng's charge of providing false or misleading information to the SFO, you attended two compulsory interviews with the SFO — one on 3 December 2019 and one on 15 January 2020. You supplied the SFO with information knowing that it was false or misleading in a material particular. Specifically:

- (a) You said the \$108,463.23 paid from Ms [Shaona] Zhang's⁴ bank account into your account on 31 May 2018 was a deposit to ANCO Properties Development Ltd, a company you and Mr [Shijia (Colin)] Zheng⁵ work at, for building a house on the North Shore — but in fact, that money was the proceeds of the sale of wine by HLG [Holding Ltd].⁶
- (b) You said [during the first interview with the SFO] that around the time the money was transferred into your account, you drafted a building quotation contract to build a house on Ms Zhang's land and it was signed — but in fact, there was no building quotation contract for a house on Ms Zhang's land created or signed in May 2018. The building quotation contract was created on 16 August 2019, signed on 26 August 2019 and backdated 21 May 2018.
- (c) You said [during the second interview with the SFO that] the 21 May 2018 building quotation contract was lost, and when you discovered this in approximately August 2019 you created, signed and backdated another contract with the same amount on Mr Colin Zheng's instructions — but in fact, as mentioned, there was no earlier building quotation contract to lose so the August 2019 document was not a replacement.

[4] The Judge in his reasons for conviction accepted that the first SFO interview was confusing for Mr Zheng, in part because English is not his first language. He was,

² *Zheng v R* [2023] NZCA 551 (French, Collins and Wylie JJ) [CA judgment] at [150].

³ *R v Zhang* [2022] NZHC 3168 (footnotes added).

⁴ The sister of Mr Yikun Zhang. Mr Zhang was a co-defendant.

⁵ The applicant's brother, who was also a co-defendant.

⁶ HLG Holding Ltd was a company of which Mr Yikun Zhang and Mr Shija (Colin) Zheng were directors and shareholders.

however, satisfied that, considering the two interviews overall, Mr Zheng told the SFO:⁷

- (a) the money paid from Ms Zhang's bank account into his bank account on 31 May 2018 was a deposit to ANCO Properties for building a house on the North Shore;
- (b) around the time the money was transferred into his account, he drafted a building quotation contract for ANCO Properties to build a house on Ms Zhang's land, and it was signed; [and]
- (c) that building quotation contract was lost, and when he discovered this in approximately August 2019, he created, signed and backdated another contract with the same amount on Mr Colin Zheng's instructions.

[5] The Judge held that the information was false in material respects. The key issue was whether Mr Zheng knew that was the case. The Judge was satisfied that "Mr Joe Zheng supplied information to the SFO knowing that it was false or misleading in a material particular".⁸ This was for the following reasons:⁹

[629] Even allowing for possible confusion at times during the interviews between when the money was received in May 2018 and when the contract was signed in August 2019, I am sure that, against the background of Mr Joe Zheng's earlier statement that the money paid from Ms Zhang's bank account into his bank account on 31 May 2018 was a deposit to ANCO Properties for building a house on the North Shore rather than money for the National Party donation, he maintained in his second interview that there was a contract in May 2018 and the August 2019 contract was a replacement.

[630] I am sure Mr Joe Zheng must have known that was false, even accepting that he followed his brother's instructions and allowing for memory lapse. Taking the following facts together, I am sure there was no earlier contract. There were no communications or documents relating to preparatory work for building on Ms Zhang's property on the North Shore until mid-2019, which was consistent with the contract document created and signed in August 2019. No contract document created in May 2018 was identified despite the SFO's extensive review of electronic devices. The 2019 contract document was backdated. There was no good reason to do so. The specifications in the 2019 contract were copied from another contract only created in July 2019. The deposit amount of \$108,463.23 in the August 2019 contract document exactly matched the NZD amount of the wine proceeds, even though the original contract was said to be dated 21 May 2018; 10 days before the wine proceeds were transferred into that NZD amount on 31 May 2018. Thus, even if there had been an original contract document, it would not have contained the same deposit amount to explain the transfer

⁷ *Zhang v R* [2022] NZHC 2541 at [624].

⁸ At [631].

⁹ Footnotes omitted.

10 days later. A house deposit to ANCO Properties should not be paid into a personal bank account. The wine proceeds were used for the National Party donation, and I do not accept the exact same amount of \$108,463.23 was inserted as the deposit amount in the August 2019 contract by mistake. Finally, the surplus was used to buy cognac.

Grounds of application for leave

[6] Mr Zheng seeks leave to appeal on the grounds that Gault J did not take sufficient account of the cultural context in coming to his findings. In Mr Zheng's submission Gault J viewed the evidence through the lens of good commercial practice in New Zealand and failed to take proper account of the cultural background and in particular the principles of *guānxi*. It is submitted that, had the Judge properly taken cultural considerations into account, Mr Zheng's explanation to the SFO would not have been rejected.

Court of Appeal decision

[7] The Court of Appeal dealt with similar arguments to those Mr Zheng wishes to advance on his proposed appeal to this Court. The Court of Appeal characterised his argument as follows:

[141] Joe Zheng's cultural argument was that his loyalty to his brother compelled him to follow Colin Zheng's instructions. It was also argued that the absence of records of any contract in May 2018 between Shaona Zhang and ANCO reflected the high level of trust that characterised the relationship between Shaona Zhang and the Zheng brothers.

[8] The Court noted that Mr Zheng and his brother came to New Zealand to attend secondary school and have lived and worked here for many years and would be familiar with New Zealand cultural norms. It was accepted, however, that they "value and regularly live by Teochew¹⁰ cultural principles".¹¹

[9] The Court did not accept that cultural considerations could relieve Mr Zheng from culpability. It explained that:¹²

¹⁰ The Teochew community comprises immigrants from the eastern part of Guangdong Province in China: see CA judgment, above n 2, at [7].

¹¹ CA judgment, above n 2, at [139] (footnote added).

¹² At [142(b)].

The logical consequence of Joe Zheng’s submission is that cultural factors meant he was obliged to deliberately mislead the SFO out of respect for or obligation to his brother and/or Shaona Zhang, and that this could act as a complete defence to the charge. None of the material relied upon by Mr Lye goes so far as to suggest that Teochew cultural concepts justify lying to law enforcement authorities.

[10] The Court considered that Mr Zheng lied to the SFO in the three respects found by Gault J, saying the conclusions were “unimpeachable”:¹³

[144] ... That evidence was carefully assessed by Gault J, who also had the advantage of watching video recordings of Joe Zheng’s SFO compulsory interviews. The Judge’s reasons for concluding that Joe Zheng deliberately set out to mislead the SFO are unimpeachable.

Our assessment

[11] This appeal relates to the particular circumstances of Mr Zheng’s case. No issue of general or public importance arises.¹⁴ Nor does anything raised by Mr Zheng suggest that cultural considerations may in this case have affected the conclusions drawn by Gault J that there was no earlier contract. There is therefore no risk of a miscarriage of justice.¹⁵

[12] The application for leave to appeal is dismissed.

Solicitors:

Pidgeon Judd, Auckland for Applicant

Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

¹³ At [144].

¹⁴ Senior Courts Act 2016, s 74(2)(a). This Court has recently examined the role of cultural considerations in *Deng v Zheng* [2022] 1 NZLR 151, [2022] NZSC 76.

¹⁵ Section 74(2)(b).