

**IN THE DISTRICT COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
CRIMINAL CASE NO 436 OF 2020**

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HKSAR

v

BISCOCHO Marijane Lucban (1<sup>st</sup> defendant)

EBRAHIM Lennis (2<sup>nd</sup> defendant)  
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Before: HH Judge Kathie Cheung

Date: 16 September 2022

Present: Mr. Neil Mitchell, Counsel on fiat, for HKSAR

Mr. Phil Chau, S.C., instructed by Messrs. Krishnan & Tsang,  
assigned by the Director of Legal Aid for the first defendant

Mr. Shaun Patrick Kelly, instructed by Messrs. Bond Ng  
Solicitors, assigned by the Director of Legal Aid for the  
second defendant

Offences: [1]-[7], [9]-[13], [15]-[17] Engaging in a commercial practice  
that constitutes wrongly accepting payment for a product

(作出構成不當地接受產品付款的營業行為)

[8] & [14] Applying a false trade description to a service  
supplied or offered to be supplied to a consumer

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(將虛假商品說明應用於向消費者提供或要約向消費者提供的服務)

[18] Breach of condition of stay (違反逗留條件)

[19]-[21] Dealing with property known or believed to represent proceeds of an indictable offence (處理已知道或相信為代表從可公訴罪行的得益的財產)

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REASONS FOR VERDICT  
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1. The first defendant has been charged with 14 counts of engaging in a commercial practice that constitutes wrongly accepting payment for a product, contrary to section 13I and 18(1) of the Trade Descriptions Ordinance, Cap. 362 (charges 1-7, 9-10, 12-13, 15-17), 2 counts of applying a false trade description to a service supplied or offered to be supplied to a consumer, contrary to sections 7A(1)(a) and 18(1) of the Trade Descriptions Ordinance, Cap. 362 (charges 8, 14), 1 count of breach of condition of stay, contrary to section 41 of the Immigration Ordinance, Cap. 115 and by virtue of regulation 2 of the Immigration Regulations, Cap. 115A (charge 18) and 2 counts of dealing with property known or believed to represent proceeds of an indictable offence, contrary to section 25(1) and (3) of the Organized and Serious Crimes Ordinance, Cap. 455, commonly known as money laundering offences (charges 19-20).

A  
B 2. The second defendant has been charged with 1 count of  
C dealing with property known or believed to represent proceeds of an  
D indictable offence, contrary to section 25(1) and (3) of the Organized and  
E Serious Crimes Ordinance, Cap. 455 (charge 21).

F 3. The first and second defendants have been jointly charged  
G with 1 count of engaging in a commercial practice that constitutes wrongly  
H accepting payment for a product, contrary to sections 13I and 18(1) of the  
I Trade Descriptions Ordinance, Cap. 362 (charge 11).

J PROSECUTION'S CASE

K *Offences under the Trade Descriptions Ordinance, Cap. 362 (hereinafter*  
L *referred as "TDO")*

M 4. At all material times, WHT Consultant Company ("WHT")  
N and Remy Consultant Company ("Remy") were not licensed employment  
O agencies. Seven Filipino domestic helpers working in Hong Kong (PW1-  
P PW7) were looking for employment opportunities for their relatives or  
Q friends ("the relevant applicants"). They were introduced or came to know  
R WHT or Remy, which they understood to be employment agencies. They  
S subsequently made payment on behalf of the relevant applicants to the first  
T and/or the second defendant(s) for applications for jobs in Hong Kong or  
U Macau such as waiter, factory worker or such like other than foreign  
V domestic helper (hereinafter referred as "FDH").

5. The second defendant was granted an employment agency  
licence for operating two different employment agencies from August  
2012 to February 2013, and from February 2016 to July 2017 respectively.

A  
B The employment agency licence was subsequently revoked in July 2017.  
C The second defendant was not an employee of any employment agency on  
D the Labour Department record.

E 6. When some of the prosecution witnesses questioned the  
F legitimacy or lawfulness of WHT or Remy, the first defendant asserted  
G WHT or Remy (as applicable) was a lawful or legitimate employment  
H agency.

I 7. Eventually, no jobs or visas were forthcoming. All the  
J relevant applicants did not get any refund for the fees paid.

K 8. The Immigration Department implements 3 schemes in  
L granting working visa, namely the “General Employment Policy”, the  
M “Supplementary Labour Scheme” and “Employment as a Foreign  
N Domestic Helper”. The Immigration Department had not received any  
O applications of the relevant applicants under the “General Employment  
P Policy” and “Supplementary Labour Scheme” through WHT, Remy, the  
Q first and/or the second defendants.

R  
S *Money laundering offences*

T 9. At all material times, the first defendant was a FDH with a  
U contractual monthly salary of HK\$4,310. Both defendants had not been  
V directors or shareholders of a limited company in Hong Kong. They were  
not registered owners of any landed property in Hong Kong in the Land  
Registry

A  
B 10. For the tax assessment years 2017/2018, 2018/2019 and  
C 2019/2020, the only reported income of the second defendant was an  
D employer's return for a salary payment of HK\$11,650 to the second  
E defendant as an assistant manager from 11 June 2018 to 9 July 2018.

F 11. During investigation in relation to charges 1 to 17, Hang Seng  
G Bank account number 774-819536-668 was found to be registered by the  
H first defendant ("account 1") and HSBC account number 110-0-038569  
I was found to be registered by the second defendant ("account 2").

J 12. From the opening of account 1 on 17 July 2018 until its last  
K transaction in September 2019, there were 55 deposits with a total sum of  
L HK\$319,745 into account 1, and 77 withdrawals with a total sum of  
M HK\$319,716. The total deposits into account 1, excluding a cheque deposit  
N of HK\$20,000 which was a loan from a money lender, add up to  
O HK\$299,745.

P 13. The total deposits into account 1 was wholly disproportionate  
Q to the first defendant's legitimate income as a FDH. Account 1 was most  
R active between October 2018 and December 2018, the first 3 months of the  
S offence period of charges 1 to 17. During this period, a total sum of  
T HK\$270,820 was deposited into account 1. At the same time, a total sum  
U of HK\$220,716 was transferred from account 1 to account 2 via 13 bank  
V transfers. Apart from account 1, the first defendant had no other operating  
personal bank account registered in her name.

14. Upon search, the mobile phone of the first defendant was  
found to contain photos of bank payment receipts showing deposits into

A  
B account 2, which include receipts for 3 bank transfer transactions from  
C account 1 to account 2 among the 13 transfers and 17 payment receipts for  
D cash deposits into account 2 with a total sum of HK\$110,500 between 23  
E September 2018 and 16 June 2019.

F 15. Account 2 was opened in 1999. Between July 2018 and  
G September 2019, HK\$858,678 (excluding interest) was deposited into  
H account 2, which includes HK\$220,716 from the 13 transfers from account  
I 1 and HK\$110,500 from the first defendant's cash deposit on 17 occasions.

J 16. The deposits into account 2 was wholly disproportionate to  
K the second defendant's declared income.

L *Offence of breach of condition of stay*

M 17. The first defendant had engaged in part time employment in  
N WHT and Remy which she knew was contrary to the conditions attached  
O to her domestic helper visa and in breach of the law.

P THE FIRST DEFENDANT'S CASE

Q 18. The first defendant has no half time submissions. After I ruled  
R a case to answer on all charges she is facing, she elected to give evidence  
S but did not call defence witnesses.

T 19. The first defendant gave evidence that she was a domestic  
U helper in Hong Kong. She had worked for the same employer for 18 years  
V since 1998. She was introduced to the second defendant by her cousin  
Nympha in August 2018. She was offered the job to deal with applicants

A  
B of WHT by the second defendant. The second defendant also offered her  
C a full time job as secretary of the company after completion of the first  
D defendant's contract with her current employer. As a result, the first  
E defendant accepted the offer. While working for the second defendant, the  
F first defendant dealt with applicants as instructed by the second defendant.  
G After she received payments from applicants including the relevant  
H applicants, she would deduct her own salary and commissions to recruiters  
I and pass the remaining sum to the second defendant either by way of  
J handing cash to her or depositing cash or transferring money to account 2.  
K She trusted the second defendant and believed there were genuine job  
L offers. She did not know WHT and Remy did not have licence for  
M employment agency service. Further, she did not know that the  
N applications would be unsuccessful. She was the one who tried to get  
O money from the second defendant to make refunds to some of the  
P applicants.

### M THE SECOND DEFENDANT'S CASE

N 20. The second defendant has no half time submissions. After I  
O ruled a case to answer to all charges she is facing, she elected to give  
P evidence but did not call other witnesses.

Q 21. The second defendant's case is that she previously had a  
R licence for employment agency but was revoked due to technicality. At  
S the material times, she only dealt with applications for FDH jobs. Since  
T WHT and Remy did not hold any licence for employment agency, she  
U would refer the applications for FDH to licensed agency for follow up and  
V would receive referral fee for this. She knew it would be impossible to  
obtain jobs for skilled worker such as waiter or factory worker for people

A  
B from overseas as the applications would not be approved by the  
C Immigration Department. The first defendant worked as a part-time  
D recruiter for WHT and Remy. Despite the second defendant had repeatedly  
E told the first defendant not to accept job applications for skilled worker,  
F the first defendant continued to do so and accept payments from applicants.  
G The second defendant later passed money to the first defendant to refund  
H the fees paid by the applicants for skilled worker. She did not know the  
I first defendant did not refund the money to the applicants.

H DIRECTIONS APPLICABLE IN THIS CASE

I 22. Prosecution has the burden to prove the requisite elements of  
J the offences beyond reasonable doubt. The defendants have no burden of  
K proof.

L 23. Both defendants elected to give evidence. Before reaching the  
M verdict, I must consider the defence evidence. If what the defence said is  
N or may be true, then the first and/or the second defendant(s) must be  
O acquitted.

O 24. Even if the defence evidence was rejected, I still have to  
P consider the prosecution's evidence and decide if the offences have been  
Q proved beyond reasonable doubt.

R 25. Given there are multiple counts of offences and two  
S defendants in this case, I have to consider each count separately and the  
T evidence for and against each defendant separately on each count.



A  
B 26. I bear in mind the first defendant has no criminal conviction  
C record when considering her credibility and propensity.

D 27. I also remind myself that if I am to draw inference, the  
E inference must be drawn from facts proved and that the inference is the  
F only irresistible inference to be drawn from the proved facts.

G 28. Mr. Mitchell, counsel for the prosecution, has in his closing  
H submissions set out the law / legal principles applicable to this case<sup>1</sup>. It  
I appears that both Mr. Chau, S.C. for the first defendant and Mr. Kelly for  
J the second defendant did not take issue with that<sup>2</sup>. The relevant law / legal  
K principles will be dealt with later, when necessary.

#### ANALYSIS OF EVIDENCE OF PROSECUTION’S WITNESSES

L 29. Prosecution called a total of 18 witnesses to testify in court<sup>3</sup>.  
M For other witnesses, their evidence was either admitted by way of Admitted  
N Facts under section 65C of the Criminal Procedure Ordinance, Cap. 221 or

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O <sup>1</sup> Paragraphs 6-16, 363-369 and 374-380 of Prosecution’s Closing Submissions dated 14 July 2022.

P <sup>2</sup> At the hearing on 5 August 2022, Mr. Kelly confirmed that he would not pursue the point set out in  
Q paragraph 17.1 and would not rely on the “reward” aspect of the law in relation to money laundering  
R offences as set out in the Second Defendant’s Closing Submissions dated 19 July 2022. In response to  
S the point that breach of the Employment Ordinance is not an indictable offence as raised in Mr. Kelly’s  
T Reply dated 5 August 2022, Mr. Mitchell in reply pointed out that it was the prosecution’s case that what  
U was going on was a scam or fraud and the same had been put to the defendants throughout the case. Mr.  
V Kelly confirmed his acceptance of this. I note from the Second Defendant’s Closing Submissions that  
Mr. Kelly took issue about the use of WhatsApp messages which the second defendant denied to be sent  
by her and the “uncharged acts”. In the Prosecution’s Reply dated 31 July 2022, Mr. Mitchell confirmed  
that the prosecution was not relying on the truth of the content of those WhatsApp messages but simply  
to show such messages had been sent in reply to inquiries from prosecution witnesses. Mr. Mitchell  
further pointed out that the cross-examination of the second defendant on the so-called “uncharged acts”  
was to lay foundation in respect of all charges involving section 13I of TDO, it was not designed to  
reflect solely on the second defendant.

<sup>3</sup> Prosecution witnesses were not called to give evidence in accordance with their witness number. To  
avoid any confusion, the witnesses will be referred to in accordance with their PW number in the  
Schedule of Prosecution Witnesses at Annex 1.

A  
B admitted under section 65B of the same Ordinance. Most of the evidence  
C came from PW1-PW7. Mr. Mitchell has in his closing submissions  
D accurately summarized the evidence of PW1-PW7. I adopt the summary  
E of evidence<sup>4</sup> (except those paragraphs setting out Mr. Mitchell's comments  
F on the defendants' replies to the testimony of the prosecution witnesses)  
and will not repeat the evidence here.

G 30. Apart from PW1-PW7 and PW20, evidence of other  
H witnesses (namely PW8, PW11, PW21-PW28) were not challenged during  
cross-examination.

I 31. Mr. Chau did not in his closing submissions criticize the  
J evidence and/or credibility of any of the prosecution witnesses. Mr. Kelly  
K only criticized the evidence and credibility of PW5 and PW20 in his  
closing submissions.

L 32. As far as PW1 Ms. Agcalis is concerned, her evidence was  
M not seriously challenged. Her evidence is straightforward and clear. Her  
N evidence is partly supported by documentary exhibits such as receipts for  
O payment<sup>5</sup>, screenshot of documents sent to her husband<sup>6</sup>, posting in  
P Facebook<sup>7</sup> and WhatsApp messages between her and the second  
Q defendant<sup>8</sup>. She was not shaken under cross-examination. Even if there is  
some doubt as to whether it was Nympha or the first defendant who talked  
R to her about the details of the job on offer, her evidence remains that it was

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S <sup>4</sup> Paragraphs 38-347 of Prosecution's Closing Submissions.

T <sup>5</sup> Exhibits P16, P17 and P19.

U <sup>6</sup> Exhibits P20 and P20A.

V <sup>7</sup> Exhibits P21-P22.

<sup>8</sup> Exhibit D2.

A  
B the first defendant who told her about the salary of the job offered to her  
C husband and it was the first defendant who received payment and issued  
D receipt. It was also the first defendant who followed up the application and  
E to whom she contacted for refund. I find PW1 an honest and credible  
witness. I accept her evidence and attach full weight to her evidence.

F 33. Similar to PW1, PW2 Ms. Domingo's evidence was not  
G seriously challenged. Her evidence is straightforward and clear. Her  
H evidence is partly supported by documentary exhibits such as receipts for  
I payment<sup>9</sup>. She was not shaken under cross-examination. I find PW2 an  
J honest and credible witness. I accept her evidence and attach full weight  
K to her evidence.

L 34. PW3 Ms. Castro's evidence is straightforward and clear. Her  
M evidence is partly supported by documentary exhibits such as receipts for  
N payment<sup>10</sup>, WhatsApp messages between her and the first defendant<sup>11</sup> and  
O WhatsApp messages between her and the second defendant at telephone  
P number 9768 9974<sup>12</sup>. She was not shaken under cross-examination. I find  
Q PW3 an honest and credible witness. I accept her evidence and attach full  
R weight to her evidence.

S 35. PW4 Ms Lagura's evidence was not seriously challenged.  
T Her evidence that the first defendant told her WHT was a lawful  
U employment agency was not disputed by the first defendant. PW4's  
V evidence is partly supported by documentary exhibits such as receipts for

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<sup>9</sup> Exhibits P25-P28.  
<sup>10</sup> Exhibits P32-P33.  
<sup>11</sup> Exhibit P34.  
<sup>12</sup> Exhibit P110.

A  
B payment<sup>13</sup> and WhatsApp messages between her and the first defendant<sup>14</sup>.  
C She was not shaken under cross-examination. It was suggested in cross-  
D examination that PW4 was a recruiter and HK\$700 was deposited into an  
E account and that it was income from WHT. PW4 denied this. As Mr.  
F Mitchell pointed out, if PW4 was short of money and needed to earn some  
G cash and asked for commission, the transfer of money after 7 months from  
H the request did not make sense and did not help at all. I agree with Mr.  
I Mitchell's observation. I find PW4 an honest and credible witness. I  
J accept her evidence and attach full weight to her evidence.  
K  
L  
M

I 36. PW5 Ms Liggayu's evidence was challenged by the second  
J defendant. Mr. Kelly criticized the evidence of PW5 in that PW5 had, in  
K 2 witness statements, provided different descriptions of the lady who dealt  
L with her in the office of WHT and such descriptions would be applicable  
M to many Chinese women in Hong Kong. Mr. Kelly submitted this indicated  
N PW5 was not sure about the features of the lady who dealt with her on 13  
O November 2018.

N 37. As Mr. Mitchell has rightly pointed out, many descriptions of  
O a person's appearance deal only with approximations as to age, height etc.  
P I do not consider this to cast any doubt on PW5's credibility.

Q 38. Mr. Kelly also submitted PW5 only spent a short period of  
R time with the lady who dealt with her on 13 November 2018 and PW5 was  
S not sure if that lady was the second defendant. In addition, PW5's  
T identification of the second defendant at the identification parade was

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T <sup>13</sup> Exhibits P39-P40.

U <sup>14</sup> Exhibit P41.

A  
B influenced by the photo of the second defendant on Facebook postings  
C about bad agencies. Mr. Kelly further submitted that PW5 was an honest  
D but mistaken witness and was wrong when she said it was the second  
E defendant who dealt with her.

F 39. While PW5 agreed she spent a short period of time with the  
G lady who dealt with her, she confirmed that she could remember her face  
H even though the meeting was for a short period of time. In giving evidence,  
I PW5 confirmed that she knew who Lennis was and she was sure the person  
J she picked at the identification parade was the person who dealt with her  
K on 13 November 2018<sup>15</sup>.

L 40. PW5's evidence is straightforward. Part of her evidence is  
M supported by documentary exhibits such as Facebook posting<sup>16</sup>, receipt for  
N payment<sup>17</sup>, screenshot of postal package with documents sent to her family  
O members for the purpose of the applications<sup>18</sup>, WhatsApp messages  
P between her and the second defendant at telephone number 6129 6291<sup>19</sup>,  
Q WhatsApp messages between her and the first defendant<sup>20</sup>, WhatsApp  
R messages between her and the second defendant at telephone number 9768  
S 9974<sup>21</sup> and WhatsApp messages between her and the second defendant at  
T telephone number 9797 7816<sup>22</sup>. As PW5 had paid someone HK\$6,000,  
U which is more than 1 month of her hard earned salary, it is understandable  
V

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<sup>15</sup> See the quotation of PW5's evidence as set out at pages 5-7 of Prosecution's Reply.

<sup>16</sup> Exhibits P44-P45.

<sup>17</sup> Exhibit P47.

<sup>18</sup> Exhibit P48.

<sup>19</sup> Exhibit P52.

<sup>20</sup> Exhibits P53 and P55.

<sup>21</sup> Exhibit P54.

<sup>22</sup> Exhibit P56.

A  
B that she would have a very good impression of the person who took her  
C money, which is also her evidence. I find PW5 not mistaken when  
D identifying the second defendant. I also find PW5 honest and credible. I  
E accept her evidence and attach full weight to her evidence.

F 41. PW6 Ms. Villaflor's evidence was not seriously challenged.  
G Her evidence is partly supported by documentary exhibits such as receipt  
H for payment<sup>23</sup>, screenshot from online search<sup>24</sup>, screenshot of documents  
I sent to her boyfriend<sup>25</sup>, WhatsApp messages between her and the first  
J defendant<sup>26</sup> and WhatsApp message between her and the second defendant  
K at 2 different telephone numbers<sup>27</sup>. PW6 was not shaken under cross-  
L examination. I find her honest and credible. I accept PW6's evidence and  
M attach full weight to her evidence.

N 42. PW7 Ms Abellera's evidence is straightforward and clear.  
O Her evidence was not seriously challenged. It was her evidence that the  
P first defendant claimed Remy was a lawful agency in reply to her  
Q boyfriend's query. This is not disputed by the first defendant. Her  
R evidence is partly supported by documentary exhibits such as receipts for  
S payment<sup>28</sup>, screenshot of document sent to her phone purportedly to show  
T application was in progress<sup>29</sup>, WhatsApp messages between her and the  
U first defendant<sup>30</sup> and WhatsApp messages between her and the second  
V

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Q <sup>23</sup> Exhibits P60 and P62.

R <sup>24</sup> Exhibit P58.

S <sup>25</sup> Exhibit P61.

T <sup>26</sup> Exhibit P63.

U <sup>27</sup> Exhibits P111-P112 at telephone numbers 9768 9974 and 9797 7816 respectively. The second  
V defendant denied messages in exhibit P112 were sent by her.

<sup>28</sup> Exhibits P68-P70.

<sup>29</sup> Exhibit P66.

<sup>30</sup> Exhibits P72-P73.

A  
B defendant at 3 different telephone numbers<sup>31</sup>. PW7 was not shaken under  
C cross-examination. I find her honest and credible. I accept PW7's  
D evidence and attach full weight to her evidence.

E 43. The evidence of PW20 is disputed by the second defendant as  
F set out in paragraph 34 of Mr. Kelly's closing submissions. I accept Mr.  
G Mitchell's submissions that there is no reason to disbelieve PW20. PW20's  
H evidence is straightforward and clear. She was not shaken under cross-  
I examination. I find PW20 honest and credible. I accept her evidence and  
J attach full weight to her evidence.

K ANALYSIS OF EVIDENCE OF THE FIRST DEFENDANT

L 44. When assessing the first defendant's credibility and evidence,  
M I bear in mind she has a clear record. I also bear in mind the second  
N defendant's previous conviction record involving dishonesty when  
O assessing whether the second defendant had deceived the first defendant as  
P alleged.

Q 45. Regarding the first defendant's evidence, I have the following  
R observations.

S *Illegal working by the first defendant*

T 46. FDH contract clearly states it is illegal for FDH to work for  
U anyone other than the contractual employer<sup>32</sup>. The first defendant

V  

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<sup>31</sup> Exhibits P117A-P117C at telephone numbers 9768 9974, 9797 7816 and 9263 4276 respectively. The second defendant denied messages in exhibit P117C were sent by her.

<sup>32</sup> See, for example, clause 4 of the first defendant's FDH contract at exhibit P107, page 6179.

A  
B confirmed she knew that since a very long time ago. Therefore, it is clear  
C that the first defendant was prepared to work illegally in WHT and Remy  
D for her own benefit.

E *The first defendant's "blind" trust in the second defendant*

F 47. The second defendant asked the first defendant to work in  
G WHT and later in Remy even though she knew it was illegal to employ the  
H first defendant. Thus, at the very beginning, the first defendant was aware  
I that the second defendant was someone who was prepared to break the law  
J by employing her and Nympha illegally to facilitate the business. Despite  
K this and the fact that the second defendant blocked the first defendant from  
L time to time, failed in her promises to refund applicants for a long period  
M of time and the intervention by the police on 19 May 2019 as a result of  
N complaints lodged by some applicants, the first defendant still alleged that  
O she trusted the second defendant. I find this incredible.

M 48. As Mr. Mitchell has submitted, the first defendant's claim of  
N trust must also be seen in the context of her first impressions of the second  
O defendant as "syndicate". At the very outset, the first defendant perceived  
P the second defendant as being a person who could not be trusted and  
Q possibly mixed up in illegal activities. The first defendant then claimed  
R her initial impressions were changed by Nympha's persuasions. I accept  
S Mr. Mitchell's submissions that it is very hard to accept that the initial  
T mistrust turned into blind faith.

S 49. I also accept Mr. Mitchell's submissions that whenever the  
T first defendant was asked a question which she thought may incriminate  
U  
V



A  
B herself in what had been going on, she relied upon her trust in the second  
C defendant to explain away her actions<sup>33</sup>.

D *“Audits” prepared by the first defendant*

E 50. The first defendant was in charge of money received while  
F she was working in WHT and Remy. She also deducted her own salary as  
G well as commissions to recruiters from the money received. Apart from  
H preparing a few handwritten “audits” in which the date and identity of the  
I persons making payments, receiving commissions or refunds were not  
J specified, the first defendant did not keep proper record of payments  
K received and payments made even though she might be held accountable.  
L Further, no “audits” were prepared for the first 3 months of the offence  
M period when the majority of the fees from applicants were received during  
this 3-month period. These “audits” definitely do not fit in with the usual  
business accounting that one would have expected to find from a legitimate  
business.

N *Illegality and temporary nature of WHT’s business*

O 51. Regarding applications by relatives of PW1-PW3, before  
P issuing receipts on 1 October 2018, the first defendant did not provide  
Q PW1-PW3 with details of the jobs and employers and did not contact the  
R employers about applications by potential employees. After receipts were  
S issued, the first defendant did not set up any interview between the relevant  
applicants and the employers and did not contact or send CV to the

T  
U <sup>33</sup> Section E(iv) of the Reference Bundle for the Prosecution’s Closing Submissions (hereinafter referred  
as “Reference Bundle”)

A  
B employers. The first defendant agreed the forms sent to the applicants were  
C useless to the applications. All these indicate the first defendant knew the  
D jobs were fake and hence there was no follow up similar to those one would  
E have expected from a legal employment agency.

F 52. The first defendant alleged that she only knew the agency was  
G illegal in November 2019, which is more than one year after she started  
H working in WHT. When she started to work there in early September 2018,  
I she should be able to observe how the business was run, such as useless  
J forms were sent to applicants, no inquiry from any potential employers, no  
K follow up with the Immigration Department, no follow up with potential  
L employers after applicants submitted applications and there was no file or  
M other document relating to all those job vacancies in the office. It is  
N difficult to accept that it would take her more than a year to discover the  
O agency was illegal.

P 53. While WHT was held out as a business established for over  
Q 10 years, there was no signboard, no accounting books, no landline  
R telephone, no headed stationery. The refund policy explained to the  
S applicants by the first defendant was inconsistent. Money relating to the  
T business of WHT was not deposited into the bank account of WHT, if any,  
U but into the bank account of the first defendant, a part-time employee of  
V the company. The receipts issued by the first defendant to the relevant  
applicants were of a generic nature with the only reference to WHT by way  
of company chop. The serial numbers of the receipts were not in  
consecutive order<sup>34</sup>. Documents were sent to applicants with a return  
addressee being the second defendant, not WHT. WHT ceased to exist

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<sup>34</sup> Section B of Reference Bundle.

A  
B  
C  
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E  
sometime early 2019 and not only moved location but traded under an  
entirely new name. Employment of illegal workers (i.e. the first defendant  
and Nympha) was involved. I agree with Mr. Mitchell's submissions that  
there was nothing to indicate this was a long established lawful business,  
indeed everything to the contrary.

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54. The first defendant knew FDH contracts were not applicable  
to those seeking employment for jobs such as waiters. She claimed that  
she followed instructions of the second defendant and was told it was the  
visa form which mattered. She was also told that WHT and Remy were  
licensed employment agencies and there was a document in the office of  
WHT, which looked like a Business Registration Certificate. She claimed  
she believed in what the second defendant told her. She therefore sent out  
FDH contracts and visa forms for Professionals to applicants. She also  
confirmed that these documents were sent with a note from her to the  
recipients telling them to just sign the documents at areas marked with X<sup>35</sup>.  
I accept Mr. Mitchell's submissions that these documents were important  
documents. The FDH contract if it was to have any relevance to the  
application contained important terms and conditions. The visa application  
form contained declarations to be made by the applicant. If these were  
genuine applications, it would be highly unusual that the applicants were  
told to simply sign the documents and not given an instruction to read the  
contents carefully. Therefore, even if the second defendant did tell the first  
defendant that WHT and Remy were licensed employment agencies and  
also about the forms as alleged by the first defendant, I find the first  
defendant would not have instructed the applicants to simply sign the forms

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<sup>35</sup> See, for example, exhibit P20A, page 415C; exhibit P48, pages 928, 930, 931 and 934; and exhibit P109.

A  
B at areas marked with X if she did hold a genuine belief that the forms were  
C appropriate to the applications and that employment agency service to  
D obtain jobs would be provided to the applicants.

E *The first defendant's role in WHT*

F 55. The answers regarding her relationship with WHT as given  
G under caution were not true. The first defendant claimed she was nervous  
H when first questioned and that was why she did not tell the truth despite  
I being given the chance to correct anything written on the notebook<sup>36</sup>. As  
J Mr. Mitchell submitted, her so-called “mistakes” continued in the  
K subsequent interviews<sup>37</sup>. I find the first defendant deliberately gave false  
L answers to distance herself from WHT and Remy.

M 56. While the first defendant in her evidence in chief stressed that  
N she was asked to face the applicant and receive money, she eventually  
O agreed in cross-examination that she was effectively running WHT. It  
P shows the first defendant was inconsistent in her role in WHT and she was  
Q trying to minimize her role in the running of the business.

R *“Updating” applicants after the first defendant left employment of WHT*  
S *and Remy*

T 57. The first defendant alleged that she left the employment in  
U May / June 2019. Nevertheless, she was still involved in “updating” the  
V applicants without reward or helping them to get refund. She even took up

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<sup>36</sup> Exhibit P1.

<sup>37</sup> Section E(i) of Reference Bundle.

A  
B the personal responsibility to refund in the case of Vilma<sup>38</sup>. I find this  
C incredible given her limited earning capacity and the warning from police  
D in May 2019.

E *Images found in the first defendant's phone as in exhibit P95*

F 58. Mr. Mitchell has set out some observations on exhibit P95 in  
G paragraphs 396-420 of his closing submissions. I accept his submissions  
H on those images of documents, such as images of documents relating to  
I WHT or applicants were stored on the first defendant's phone even before  
J the first defendant was introduced to the second defendant; that there are  
K images of only a few handwritten "audits" by the first defendant but there  
L appears to be no such "audits" between 1 October 2018 and 6 January 2019  
M which was the period when the majority of money was received from the  
N applicants; that images of some documents relating to applications with  
O date of creation in August to November 2019 were found in the first  
P defendant's phone despite her claim that she left the employment in May /  
Q June 2019; that while there were images of lists of available jobs, they were  
R FDH jobs but there was no reference to jobs such as waiter, factory workers  
S and such like. All these images of lists were uploaded in September 2018  
T and there are no images of lists beyond that date. The first defendant  
U claimed that the second defendant sent her image of list of vacancies for  
V waiters on 1 October 2018 but none could be located on her phone.

R 59. Page 3042 of exhibit P95 is a copy of Wah Hong Tai Business  
S Registration Certificate (unframed), the date of creation of this image on  
T the first defendant's phone is 14 August 2018. In evidence, the first

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U <sup>38</sup> Exhibit P95, pages 3280-81.

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defendant claimed that she had received this because it was required by the courier company. As Mr. Mitchell has pointed out, this does not make sense. The first defendant said she had not commenced work until 4 September 2018. Further, the packets were sent under the second defendant's own name, not Wah Hong Tai or WHT<sup>39</sup>. The address on the Business Registration Certificate is an address at Wanchai Hennessy Road while the sender's address on the packets was that in the Kwun Tong Industrial Building. Thus, this Business Registration Certificate would have been useless even if required. I accept Mr. Mitchell's submissions that the first defendant was not telling the truth about this. The more logical explanation being that the first defendant obtained this so that she could then show to her potential applicants which agency she was working for. Pages 3212 and 3213 are copies of the same Business Registration Certificate but this time in a frame. I accept Mr. Mitchell's submissions that this was obviously used to display at the Kwun Tong Industrial Building as a prop to show WHT had substance when in fact it did not.

*The first defendant's financial position*

60. The summary of transactions in exhibit P86 shows that at the time the first defendant entered into the arrangement with the second defendant, her bank account balance less the loan from Welend was very low. Nevertheless, the first defendant still maintained that she was not in financial difficulties.

61. Further, the first defendant also alleged that on some occasions she had used her own money to facilitate refunds to applicants.

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<sup>39</sup> See, for example, exhibit P20A, page 415B and exhibit P48, page 926.

A  
B Bearing in mind the first defendant’s limited earning capacity and the low  
C balance in her bank account, such claim is not credible.

D *Offer of job by the second defendant*

E 62. Despite the allegation that the second defendant offered the  
F first defendant to work as secretary of WHT at a monthly salary of  
G HK\$7,000 after she completed the contract with Mr. Chan in a year’s time  
H and that she had to work part-time for the time being in order to “learn the  
I skills”, there was no document to support such offer and no training was  
J ever provided to the first defendant. I accept Mr. Mitchell’s submissions  
K that such claim lacked any credibility as the job offered by the second  
L defendant did not match in salary and conditions of those the first  
M defendant was offering to the applicants. It seems illogical for her to accept  
N a posting offering a salary of only HK\$7,000 when allegedly there were  
O other jobs with a higher salary available.

M *Commission for introducing applicants*

N 63. The first defendant denied receiving any commission. In the  
O “audits” prepared by the first defendant, commission was deducted from  
P the fees paid by the applicants but there was no reference to whom such  
Q commission was due and payable. Commission was deducted alongside  
R the “salary” charged by the first defendant and this matched the  
S arrangement which the second defendant said was in place. As Mr.  
T Mitchell has pointed out, the first defendant’s claim that she was not  
U interested in earning commission despite being a person of limited earning  
V capacity and despite being a person who had obtained short term loans is  
simply not credible.

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*Application by the first defendant's brother*

64. While the allegation that the first defendant also made applications for her brother and her brother's friends could not be rebutted, this does not necessarily mean that the first defendant would not cheat or deceive others.

65. Given the first defendant knew useless forms were sent to applicants for the job applications, it is incredible that she would apply for her brother and her brother's friends as alleged. Further, I accept Mr. Mitchell's submissions that the first defendant, instead of contacting her brother directly about the medical check, included her brother in the Facebook posting regarding medical check was just a pretence to show other applicants that progress was being made in respect of their applications.

66. While the first defendant claimed that she sent a refund to her brother and a friend of her brother from her own money, she did not tell PW7 about this when they were discussing about refund.

67. After the first defendant was arrested, she did not mention about her brother or herself being a victim when she was questioned by the authorities despite she volunteered information to other questions put to her. I accept Mr. Mitchell's submissions that the involvement of her brother is at least questionable.

*Follow up by the first defendant*



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68. Given the fact that WHT and Remy were not licensed employment agencies and the first defendant knowingly sent useless forms to applicants thereby making it impossible to have the applications processed successfully, I find the so-called follow up by the first defendant, such as request for CV or supporting documents, giving estimate of time when visa would be issued, arrangement of medical check, follow up with request for refunds and communication with applicants via WhatsApp, are steps to create the impression that something had been done in relation to the applications so as to delay the applicants from discovering that the whole business was a scam.

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*Extra money requested*

69. Mr. Chau submitted that once the monies were received from the applicants, there were never any requests from the first defendant for extra money to expedite the applications. I find this irrelevant to the issue as to whether the first defendant intended not to provide the product at the time of receiving the payment. For those applicants who switched to Macau, the evidence shows PW6 and PW7 were required to pay extra sums while PW4 was not required to do so. The fact that some applicants were not asked for extra sum does not necessarily mean that there is no intention to cheat them at the very outset. It may probably depend on whether they had sufficient money to pay the extra sum demanded.

*Successful applications*

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C 70. The first defendant claimed she believed in the second  
D defendant and was shown images of successful applications<sup>40</sup>. Although  
E the second defendant had sent the first defendant such images, only 4  
F successful applications are relevant to the period in question. All those  
G applications relate to FDH jobs, not the type of jobs offered to the relevant  
H applicants.

G  
H *Civil unrest in Hong Kong*

I 71. Mr. Chau mentioned about the application time frame which  
J coincided with the beginning of a period of civil unrest in Hong Kong.  
K While it is not disputed that there was a period of civil unrest in Hong Kong  
L in the latter part of 2019, the fact remains that the first defendant sent out  
M inappropriate forms to those applicants long before such period of civil  
N unrest and she knew the applications would not succeed. Thus, I do not  
O accept Mr. Chau's submissions that it was reasonable for the first defendant  
P to expect many of the applications that would have otherwise succeeded to  
Q now fail.

O  
P *Arrangement of refund*

Q 72. Even though there was arrangement for refunds to some of the  
R applicants, those refunds do not relate to PW1-PW7. Further, the so-called  
S receipts for refunds in exhibit P95 relate to refunds made after police  
T intervention on 19 May 2019. It is irrelevant to the issue regarding the  
U intention of the first defendant at the time of receiving payment.

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<sup>40</sup> Exhibit D3.

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73. In view of the above, I consider the first defendant not an honest and credible witness. I reject her evidence.

ANALYSIS OF EVIDENCE OF THE SECOND DEFENDANT

74. I note from the evidence that the second defendant has previous conviction records. Nevertheless, I remind myself not to take that into consideration when assessing the second defendant’s credibility and evidence.

75. In relation to the second defendant’s evidence, I have the following observations.

*No intention to supply service to applicants*

76. In cross-examination, the second defendant admitted WHT and Remy could not process application for jobs such as waiter, dishwasher and such like. She admitted there was no intention to supply employment agency service to those applicants for non FDH jobs.

*The second defendant’s job title and actual role in WHT and Remy*

77. While the second defendant emphasized in her evidence that she was a consultant of WHT, Remy and other employment agencies, she was designated with different job titles in different agencies. For example, a letter dated 27 March 2019 was signed by the second defendant as

A  
B “managing director” of WHT<sup>41</sup>. The second defendant attempted to  
C explain this away suggesting she was not the author of the letter but had  
D simply signed it as requested. Various business cards of the second  
E defendant describe the second defendant as “Catherine Yu, Manager of  
F Remy Consultant Company”<sup>42</sup> or “Lennis, Director of Marco Consultant  
G Company”<sup>43</sup>.

H 78. According to PW20, when she made enquiries of the second  
I defendant during the visit at the office of Remy on 23 May 2019, the  
J second defendant claimed to be the manager of Remy and Marco  
K Consultant Company. The second defendant also handed over the two  
L business cards at exhibits D21 and D22.

M 79. At her arrest on 7 November 2019, the second defendant told  
N the Customs and Excise officers a different story, namely that she was a  
O sales consultant and that she was not familiar with the first defendant nor  
P was the first defendant a staff member of WHT<sup>44</sup>.

Q 80. While the second defendant claimed herself to be consultant  
R of WHT and Remy, in her WhatsApp messages with some of the  
S prosecution witnesses, the second defendant held herself out as the person  
T in charge by asking prosecution witnesses not to listen to others and that  
U she was the assurance<sup>45</sup>.

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S <sup>41</sup> Exhibit P95, page 3220.

T <sup>42</sup> Exhibit D21.

U <sup>43</sup> Exhibit D22.

V <sup>44</sup> Exhibit P14.

<sup>45</sup> Exhibit P111, pages 1216-17 and exhibit P117A, page 1386.

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81. According to the second defendant, Emily Lau was the only proprietor of Energetic Employment Services Centre but she provided incorrect information to Business Registration Office and also the Employment Agencies Administration System by naming the second defendant as a partner when the second defendant was only a manager<sup>46</sup>. Further, the second defendant claimed she had no relationship with Marco Consultant Company. Nevertheless, her name, address of Remy and old Chinese name of WHT was used in the business card of Marco Consultant Company<sup>47</sup>. I agree with Mr. Chau's submissions that the second defendant has always sought to distance herself from any position / title suggesting she had a managerial role in any of the companies she was associated with.

82. While the second defendant claimed she was only consultant of WHT and Remy, the refunds that were actually paid out to some of the applicants all bear the similar text "... amount received ... on behalf of Ebrahim Lennis"<sup>48</sup>. This shows the second defendant was in charge of WHT and Remy.

*Overcharging by WHT*

83. The second defendant had previously held an employment agency licence and also worked for licensed employment agencies, she should have known the amount the applicants could be charged for the services is limited to 10% of the first month's salary<sup>49</sup>. Nevertheless, the

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<sup>46</sup> Exhibits D18-D19.

<sup>47</sup> Exhibit D22.

<sup>48</sup> Exhibit D14.

<sup>49</sup> Section 10 of the Employment Agency Regulations, Cap. 57A.

A  
B second defendant claimed in cross-examination that such restriction only  
C applied to FDH seeking to renew their contracts. I agree with Mr.  
D Mitchell's submissions that her claim was an attempt to deflect any  
E suggestion that WHT was overcharging.

F  
G *Instruction to get forms*

H 84. The second defendant admitted in evidence in chief that the  
I note at page 3157 of exhibit P95 was written by her. It is an instruction to  
J collect the "contracts" (presumably FDH contracts) together with forms  
K ID990A and ID990B. These forms relate to visa applications to the  
L Immigration Department by Professionals. Those relating to FDH bear the  
M number ID988A and ID988B<sup>50</sup>. The relevant applicants were sent FDH  
N contracts together with ID990A<sup>51</sup> despite the two being totally  
O incompatible and would not secure the visa to come to work in Hong Kong.  
P In cross-examination, the second defendant claimed that the request for the  
Q forms ID990A and ID990B was not in her handwriting but had been added  
R by a third person possibly Nympha. I accept Mr. Mitchell's submissions  
S that this does not make sense since it would mean Nympha was giving  
T instructions to herself. This is an attempt by the second defendant to  
U distance herself from this note.

V *Illegal employment of the first defendant*

85. The second defendant confirmed she knew it was illegal to  
employ FDH to work for other employer in addition to the contractual

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<sup>50</sup> See, for example, exhibits P115A and P115B.

<sup>51</sup> See, for example, exhibit P48, pages 931-4 and exhibit P61, pages 1103-4.

A  
B employer. She claimed she only recruited the first defendant as a part-time  
C recruiter.

D 86. While the second defendant denied offering to pay the first  
E defendant HK\$70 per hour for the job, she did not stop the first defendant  
F from deducting her salary from the money received. Her act / omission  
G was inconsistent with what she alleged.

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*Illegal applications*

H 87. Despite the fact that the first defendant had been warned not  
I to accept application for skilled worker, the second defendant nevertheless  
J did not stop the first defendant from arranging medical check for those  
K applying as skilled worker. That does not tally with the running of  
L legitimate business but did give the applicants false hope or impression that  
M something had been done. Further, the second defendant did not dismiss  
N or terminate the employment of the first defendant in such circumstances.

N 88. Even though it was impossible for WHT / Remy to process  
O the applications for skilled worker, the second defendant still gave a date  
P of when the documents would be ready in her WhatsApp messages with  
Q some prosecution witnesses<sup>52</sup> instead of telling them that the applications  
R could not be processed.

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*Refund*

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<sup>52</sup> See, for example, exhibit P111, page 1213; exhibit P117A, page 1290 and exhibit P117B, page 1378.

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B 89. Regarding the list for refund at exhibit D15, after the second  
C defendant passed the money to the first defendant, she did not know what  
D the first defendant did with the money and whether she had passed the  
E money to the applicants. Further, the second defendant did not verify if  
F the list was correct before she passed the money to the first defendant. I  
G find the second defendant's way of handling this is incredible given a huge  
H sum of money was to be passed to the first defendant, who had been  
I disobeying her instructions all along, and without any verification or  
J supporting documents.

K  
L 90. Although the second defendant alleged she had passed the  
M monies to the first defendant for arrangement of refunds, she did not in her  
N WhatsApp messages with prosecution witnesses notify them about this and  
O asked them to approach the first defendant. For example, page 4 of exhibit  
P D15 at entry 2 purports to show that a few weeks after September 2019,  
Q HK\$24,000 was returned to PW7. The WhatsApp messages between the  
R second defendant and PW7 as accepted by the second defendant<sup>53</sup> shows  
S PW7 had been begging the second defendant for return of her money from  
T 3 April 2019 to 23 October 2019. Nowhere in these messages did the  
U second defendant tell PW7 that she had given the money to the first  
V defendant for PW7's refund. I accept Mr. Chau's submissions that the only  
conclusion is that no such monies were given to the first defendant and that  
exhibit D15 is a forgery.

89. I also accept Mr. Chau's submissions that instead of  
informing prosecution witnesses that monies had been paid to the first  
defendant for arrangement of refunds, the second defendant's attitude was

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<sup>53</sup> Exhibits P117A-117B.



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B to evade and ignore, giving excuses such as being away from Hong Kong<sup>54</sup>,  
C being ill<sup>55</sup>, promising the applicants that the documents were ready<sup>56</sup> or  
D giving dates when the applications would be finalized<sup>57</sup>.

E 92. Mr. Chau also submitted the only documentary evidence of  
F the so-called refund lies in the 5 bank transfers from the second defendant  
G to the first defendant. These 5 transfers took place between 15 October  
H 2018 and 3 June 2019. The total sum is only HK\$22,460. I find the  
I transfers do not tally with the receipts for refund as found in exhibit P95,  
J both in terms of date of refund and amount.

I *Illegal nature of money received*

J 93. The second defendant confirmed she was living off the funds  
K deposited by the first defendant, which she admitted were from illegal  
L sources.

M *Response under caution*

N 94. Mr. Chau submitted that in the post-record after arrest, the  
O second defendant was fully aware of her right to remain silent, yet she  
P chose to give differing answers to best extricate herself. The answers given  
Q were totally at odds with the real situation (i.e. that she was the person in  
R charge of Remy) and those answers given to PW20 on 23 May 2019. The

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T <sup>54</sup> Exhibit P111, pages 1210-11.

T <sup>55</sup> Exhibit P111, page 1211.

U <sup>56</sup> Exhibit P117B, page 1382.

V <sup>57</sup> Exhibit P111, page 1213 and exhibit P117B, page 1378.

A  
B second defendant admitted that she lied in the post-record about who the  
C boss of WHT was. She also exercised her right to silence when asked “who  
D employed you and paid you salary?”<sup>58</sup>. I agree with Mr. Chau’s  
E submissions that the post-record shows the second defendant had been  
selectively giving or not giving answers.

F *Denying the obvious*

G 95. While the second defendant denied she had been using  
H different telephone numbers at the material times, from what she had  
I admitted, she was at least using 3 different telephone numbers during the  
J offence period in question. Claiming the telephone number 9797 7816 was  
K the telephone number used by the company, the second defendant had on  
L two occasions admitted she used that number to communicate with PW7  
M via WhatsApp from 10 September 2019 to 23 October 2019<sup>59</sup> and with  
N PW5 via WhatsApp from 8 October 2019 to 4 November 2019<sup>60</sup>  
O respectively while at another occasion denied using this number to  
P communicate with PW6 via WhatsApp from 19 September 2019 to 25  
Q September 2019<sup>61</sup> even though this period falls within the period when she  
R was communicating with PW7 using the same number. Further, the  
manner and tone of the person responded in messages in exhibit P112 were  
S very similar to the manner and tone of the second defendant as disclosed  
T in her messages in exhibits P56 and P117B. The second defendant  
U confirmed that apart from her, the first defendant and Nympha also had  
V access to that telephone number. She even went further to suggest someone

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<sup>58</sup> Exhibit P14, page 3459.

<sup>59</sup> Exhibit P117B.

<sup>60</sup> Exhibit P56.

<sup>61</sup> Exhibit P112.

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pretended to be her and replied in a tone similar to her in exhibit P112. I find her allegation simply unbelievable.

96. In view of the above, I consider the second defendant not honest and credible. I reject her evidence.

FINDINGS

*Offences under section 13I of TDO*

97. Given I find all prosecution witnesses credible and honest and reject the evidence of the first and second defendants, I find the incidents happened in the manner as testified by all prosecution witnesses. I also find the first defendant was at the material times an employee of WHT / Remy and she was acting in the name of WHT / Remy when she dealt with PW1-PW7 while the second defendant was the person responsible for management of WHT and Remy at the material times.

98. For the purpose of the offences under section 13I of TDO, I accept employment agency service to obtain job fall within the definition of “product” as defined in section 2 of TDO.

99. Mr. Mitchell referred to the extended definition of “trader” in section 2(5) of TDO which reads:

*“In this Ordinance a reference to a trader includes any person acting in the name of, or on behalf of, a trader.”*

100. I accept Mr. Mitchell’s submissions that “trader” covers what the first defendant was alleged to have done and the second defendant if

A  
B she was managing the business of WHT and/or Remy. Based on my  
C finding of facts above, both defendants fall within the definition of “trader”  
D under TDO.

E 101. “Employment agency” is defined in section 50 of the  
F Employment Ordinance, Cap. 57:

G *“a person who operates a business the purpose of which is—*  
H *(a) to obtain employment for another person; or*  
I *(b) to supply the labour of another person to an employer,*  
*whether or not the person who operates the business will derive*  
*any pecuniary or other material advantage from either the*  
*employer or such other person;”*

J 102. It is clear from the evidence of PW1-PW7 that what WHT /  
K Remy was offering to them was service to obtain jobs for the relevant  
L applicants. Therefore, I find WHT and Remy were run as employment  
agencies at the material times.

M 103. Mr. Chau submitted that WHT and Remy offered service to  
N assist in the procuring of jobs or positions of employment for a fee. The  
O service they offered does not guarantee the applicant success in procuring  
P a job or position. Therefore, it would be unreasonable to conclude that just  
Q because the applications related to PW1-PW7 failed, there was no  
R reasonable grounds to believe that WHT or Remy could provide such  
S service. Mr. Chau submitted that the prosecution must prove beyond  
T reasonable doubt that WHT or Remy simply could not or did not even try  
U to find jobs for any applicants, and that the first defendant was aware of  
V this at the time she received the payments.

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104. It is not disputed WHT and Remy were not licensed employment agencies. Further, the jobs of waiter, factory worker and such like offered to the relevant applicants are not jobs that fall within the different schemes for imported labour. It is clear from the evidence of immigration officers that Filipino cannot come to Hong Kong to take up the type of jobs offered to the relevant applicants in this case. In the circumstances, it is clear that WHT and Remy, even if they were licensed employment agencies when in fact they were not, would not be able to obtain employment for such jobs in Hong Kong. Therefore, I find WHT and Remy could not and would not provide the employment agency services in this case.

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105. According to the evidence of the prosecution witnesses, the common features in respect of the applications of all the relevant applicants handled by the first and/or the second defendant(s) are as follows:

- (a) jobs other than FDH were offered to the relevant applicants;
- (b) the relevant applicants were applying to come to Hong Kong to work in jobs other than FDH;
- (c) money was received by the first and/or second defendant(s) for such applications;
- (d) FDH contracts and the visa application forms for professionals were sent to the relevant applicants and they were asked to sign at areas marked with X;
- (e) the aforesaid contracts and visa application forms sent to the relevant applicants were not appropriate and in fact useless to their applications;

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- (f) given the mismatch of the forms, the applications of the relevant applicants would not be processed by the Immigration Department for consideration of visa;
- (g) no interview with prospective employer was arranged for any of the relevant applicants;
- (h) identity and/or detail of prospective employer was not disclosed to any of the relevant applicants;
- (i) there was no progress at all in respect of all these applications after a long period of time;
- (j) no working visa was issued in respect of any of the relevant applicants;
- (k) when the relevant applicants demanded for refund of the fees paid, no refund was made even up to the time PW1-PW7 gave evidence in court;
- (l) the jobs applied by the relevant applicants could not be regarded as “professional” and did not fall within the General Employment Policy or Supplementary Labour Scheme in respect of imported labour;
- (m) no application in respect of any of the relevant applicants had been submitted to the Immigration Department under any of the scheme for imported labour; and
- (n) WHT and Remy had no licence to run the business of employment agencies.
106. Given the above features, I consider the only irresistible inference to be drawn from the facts that I have accepted is that the first defendant knew WHT and Remy were not licensed employment agency, and that WHT and Remy could not obtain the jobs offered to the relevant

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B applicants. Thus, she had no intention to provide the service to obtain those  
C jobs for the relevant applicants when she received payments from the  
D relevant applicants via the prosecution witnesses.

E 107. In relation to the payments by PW6 and PW7 for switch of  
F applications to Macau (charges 13 and 17), given the aforesaid findings,  
G the fact that no interview with prospective employer was arranged, identity  
H and/or detail of prospective employer was not disclosed, no details of the  
I Macau employment agency was provided, there was no progress of the  
J applications up to the time the matter was reported to the authorities, I find  
K the only irresistible inference to be drawn is that the first defendant knew  
no jobs in Macau would be obtained for the relative of PW6 and PW7 and  
she had no intention to provide service to obtain the jobs for them when  
she received payments from PW6 and PW7.

L 108. Regarding the second defendant, it is not disputed that WHT  
M and Remy had no licence. As I have already found the second defendant  
N was responsible for the management of WHT and Remy, she must have  
O known that WHT and Remy were not licensed employment agencies and  
P were not able to obtain jobs offered to the relevant applicants. Given the  
Q above common features of the applications, I find the only irresistible  
R inference to be drawn is that the second defendant had no intention to  
S provide the service to obtain job for the relevant applicant when she  
T received payment from PW5.

U 109. Therefore, I find at the time of accepting payments from the  
V relevant applicants via the prosecution witnesses, the first and/or the  
second defendant(s) knew that the product (i.e. employment agency service

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B to obtain jobs) could not and would not be provided and they had no  
C intention to provide the same.

D 110. Mr. Chau submitted the first defendant relied on the statutory  
E defence under section 26 of TDO in that the first defendant relied on what  
F the second defendant said, and had taken all reasonable precautions with  
G due diligence to ensure that the offences would not be committed. He  
H submitted the first defendant was heavily reliant on the second defendant,  
I her “boss” and “owner” of the employment agencies. Referring to *Philip*  
J *John Russell v The Director of Public Prosecutions* [1996] 12 WLUK 418,  
K which was cited with approval in *HKSAR v Tsang Sio Pou* [2020] 2  
L HKLRD 729, Mr. Chau submitted that the first defendant had exercised all  
M reasonable precautions with due diligence by acting under the instructions  
N of the second defendant.

O 111. As I have rejected the first defendant’s evidence, I need to  
P consider if there is any evidence from the prosecution’s case which may  
Q support the first defendant’s statutory defence. I find there is no evidence  
R to support the statutory defence under section 26.

S 112. As far as the second defendant’s statutory defence under  
T section 26 of TDO is concerned, after I have rejected the second  
U defendant’s evidence, I find there is no evidence from the prosecution’s  
V case to support the statutory defence under that provision. I have already  
found the second defendant knew it was impossible for WHT and Remy to  
process any application for jobs, in particular non FDH jobs. Nevertheless,  
the second defendant, instead of telling PW5 about this and refused to  
accept payment, she accepted payment from PW5, telling her details about  
the package and issued her a receipt in relation to application for



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B “factory”<sup>62</sup>. Further, despite her allegation that she had warned the first  
C defendant about not accepting applications for non FDH jobs, she did not  
D take any other steps to stop the first defendant from doing so. Instead, she  
E still kept the monies deposited by the first defendant until a very late stage.  
F Therefore, I reject the second defendant’s statutory defence under section  
G 26.

H  
I 113. The second defendant also relied on the statutory defence  
J under section 26B(1) of TDO. Mr. Kelly submitted that the second  
K defendant was only a consultant of WHT and not involved with illegal  
L employment applications. She offered to procure the first defendant to  
M supply the service to PW5 and PW5 accepted the offer. I repeat my finding  
N that the second defendant was responsible for management of WHT and  
O Remy. From the evidence I accepted, there is no evidence to show that the  
P second defendant offered to PW5 to procure a third party to supply the  
Q product. According to PW5, she made initial contact with the second  
R defendant and was directed to contact the first defendant, she was not told  
S the first defendant was a third party to supply her with the service<sup>63</sup>. Later,  
T PW5 went to the office of WHT and met the second defendant. The second  
U defendant asked her what she had discussed with the first defendant. Then,  
V the second defendant told PW5 about the job available to her brother, that  
she would send contract to her brother and the processing time was about  
5 months before she took the money from PW5. As I have found the first  
defendant was an employee of WHT and Remy, it would not be possible  
for the second defendant to offer the first defendant as an independent third  
party to PW5. I therefore reject the statutory defence under section 26B(1).

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T <sup>62</sup> Exhibit P47.

U <sup>63</sup> Exhibit P52, page 992.

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114. Regarding the statutory defence under section 26B(2), I have already rejected the second defendant’s case that she had paid monies for the refund as set out in exhibit D15. In any event, PW5 has confirmed that she has not received any refund, partial or otherwise. Thus, the statutory defence under section 26B(2) is rejected.

115. In view of the above, I find the prosecution has proved beyond reasonable doubt that the first defendant is guilty of charges 1-7, 9-13, 15-17 and the second defendant is guilty of charge 11.

*Offences under section 7A of TDO*

116. For the offence of applying a false trade description, Mr. Chau submitted that in order to convict the first defendant, the prosecution must prove beyond reasonable doubt that the first defendant applied a trade description to the employment agency services provided by WHT / Remy and such a trade description was false in a material way.

117. Mr. Chau submitted that the first defendant relied mainly on the statutory defence under section 26(i)(B) in that she worked for the second defendant and acted under the second defendant’s authority and instructions when conducting business for WHT and Remy. The first defendant trusted the second defendant when she told the first defendant that WHT and Remy could provide the purported employment agency services and that the agencies themselves were licensed employment agencies.

A  
B 118. Mr. Chau submitted the statutory defence under section 26 of  
C TDO only requires what is reasonable under the circumstances. Again, he  
D submitted that independent assessment by the first defendant was not  
E required in this case.

F 119. According to the evidence accepted by me, I find the first  
G defendant did assure PW4 and PW7 that WHT and/or Remy was a  
H legitimate employment agency when in fact they were not. As mentioned  
I above, I reject the first defendant's evidence and find the first defendant  
J knew WHT and Remy were not licensed employment agencies when she  
K gave the assurances. The statutory defence under section 26 is rejected. In  
L the circumstances, I find the prosecution has proved beyond reasonable  
M doubt that the first defendant is guilty of charges 8 and 14.

N *Money laundering offences*

O 120. It is prosecution's case that the whole business was a scam to  
P deceive the relevant applicants for their money. As a result of the  
Q deception, PW1-PW7 made payments to the first and/or the second  
R defendant(s).

S 121. Charge 19 against the first defendant concerns the total sum  
T of HK\$299,745 deposited into the first defendant's account (account 1)  
U between 17 July 2018 and 30 September 2019 excluding a loan from  
V Welend Limited of HK\$20,000<sup>64</sup>.

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<sup>64</sup> Item 4 of exhibit P86.

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122. Charge 20 against the first defendant concerns cash in the total sum of HK\$110,500 which the first defendant deposited directly into the second defendant's account (account 2) representing applicants' fees paid to the first defendant.

123. Charge 21 against the second defendant represents the total sum of HK\$331,216 deposited / transferred by the first defendant to the second defendant's account, which the second defendant admitted in evidence in chief came from an illegal source.

124. The first defendant accepts that if it is proved that the first defendant intended to commit the offences or did not supply the product within a reasonable time under TDO, then the first defendant will have no defence to the money laundering charges.

125. Given my finding that the first defendant intended not to provide the product at the time of receiving payments from the prosecution witnesses, the first defendant must have known that the monies she received are proceeds of crime. In the circumstances, it is proved beyond reasonable doubt that the first defendant is guilty of charges 19 and 20.

126. So far as the second defendant is concerned, she received or acquired the property by way of a chose in action in her bank account representing the transfers or deposits in cash made by the first defendant of the fees received from applicants.

127. The second defendant in evidence in chief admitted the funds she received from the first defendant came from an illegal source, those funds having been derived partly from the fees paid by the relevant

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B applicants via PW1-PW7 and partly from other applicants for jobs such as  
C waiter, dishwasher, factory worker, etc.

D 128. Mr. Kelly submitted that the second defendant's primary case  
E is that those deposits represented the receipt of deposit from legitimate  
F applications. If any possible illegal applications were involved, the second  
G defendant immediately returned the amount to the first defendant. Mr.  
H Mitchell submitted the so-called "legitimate" applications for FDH jobs  
I are, according to the law, not "legitimate" as WHT and Remy did not have  
J licence for carrying the business of employment agency. In any event, the  
K evidence shows that only 4 successful applications for FDH jobs are  
L relevant to the period in question. Even if the second defendant was  
M entitled to referral fees for these 4 applications, the majority of the funds  
N deposited into her account during that period would be fees from  
O applications for non FDH jobs, which are definitely money received from  
P the scam, and thereby proceeds of crime. Further, contrary to Mr. Kelly's  
Q submissions, the bank account statements of account 2 show that the  
R second defendant did not immediately returned the proceeds of crime to  
S the first defendant. Instead, the monies were kept in her account for quite  
T some time and it would appear that she basically lived off on those monies  
U as she had no other income during that period of time.

V 129. Given my finding of the two defendants' knowledge of the  
illegality of the agency and their acceptance of payments without the  
intention to provide the product, the payments accepted are proceeds of  
crime. In the circumstances, I find both defendants knew the monies were  
proceeds of crime. Therefore, the prosecution has proved beyond  
reasonable doubt that the first defendant is guilty of charges 19 to 20 and  
the second defendant is guilty of charge 21.

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*Offence in relation to breach of condition of stay*

130. As the first defendant worked in WHT and Remy while she was working under a domestic helper contract, she had breached her condition of stay. Mr. Chau for the first defendant confirmed there was sufficient evidence to convict the first defendant of this offence. I find the prosecution has proved beyond reasonable doubt that the first defendant is guilty of charge 18.

131. To sum up, both defendants are guilty of all the respective charges they are facing.

( Kathie Cheung )  
District Judge

**SCHEDULE OF PROSECUTION WITNESSES**

	<b><u>Name</u></b>	<b><u>Role</u></b>	<b><u>Attendance at Court</u></b>
	<b>Civilian witnesses</b>		
<b>PW1</b>	AGCALIS Rosalina Acosta	/	4.8.2021 (AM) EIC Mitchell  4.8.2021 (PM) XXN CHAU S.C.  5.8.2021 (AM) XXN CHAU S.C. XXN Kelly RXN Mitchell
<b>PW2</b>	DOMINGO Jocelyn Brillantes	/	5.8.2021 (PM) EIC Mitchell  6.8.2021 (AM) EIC Mitchell XXN CHAU S.C. XXN Kelly RXN Mitchell
<b>PW3</b>	CASTRO Nena Dayot	/	11.8.2021 (AM) EIC Mitchell  11.8.2021 (PM) XXN CHAU S.C. XXN Kelly RXN Mitchell
<b>PW4</b>	LAGURA Maria Aurora Garcia	/	10.8.2021 (AM) EIC Mitchell XXN CHAU S.C. XXN Kelly (Nil) RXN Mitchell

	<u>Name</u>	<u>Role</u>	<u>Attendance at Court</u>
<b>PW5</b>	LIGGAYU Mary Joy Javier	/	6.8.2021 (PM) EIC Mitchell  9.8.2021 (AM) EIC Mitchell XXN CHAU S.C  9.8.2021 (PM) XXN CHAU S.C. XXN Kelly RXN Mitchell
<b>PW6</b>	VILLAFLOJ Jovelyn Quines	/	12.8.2021 (Whole day) EIC Mitchell  13.8.2021 (AM) XXN CHAU S.C. XXN Kelly RXN Mitchell
<b>PW7</b>	ABELLERA Preciosa Gaspar	/	16.8.2021 (AM) EIC Mitchell  18.8.2021 (Whole day) EIC Mitchell  19.8.2021 (AM) EIC Mitchell XXN CHAU S.C.  19.8.2021 (PM) XXN CHAU S.C. XXN Kelly RXN Mitchell



	<u>Name</u>	<u>Role</u>	<u>Attendance at Court</u>
<b>Customs, Police and Labour officers</b>			
<b>PW8</b>	Customs Inspector LUNG Tsz-ling	Arresting Officer (D1), Interviewing Officer (D1)	3.8.2021 (AM) EIC Mitchell XXN CHAU S.C.  Admitted facts Para. 1-35 (exhibit P1, 3-7 of bundle A(1))
<b>PW9</b>	CO 16289 OR Ngan-to	Arresting Officer (D2), Interviewing Officer (D1 & D2), Exhibit Officer	Admitted facts Para. 62-71 (exhibit P14 of bundle B)
<b>PW10</b>	Customs Inspector CHOI Cheuk-fun	Arresting Officer (D1), Interviewing Officer (D1)	Admitted facts Para. 37-54 (exhibit P8-P10 of bundle A(2))
<b>PW11</b>	CO 17139 LI Po- cheung	Interviewing Officer (D1) Arresting Officer (D2), Exhibit Officer	25.8.2021 (AM) EIC Mitchell Admitted facts Para. 55-61 (exhibit P11 of bundle A(2))
<b>PW12</b>	Customs Inspector CHAN Cheuk-hung	Interview witness (D1)	Admitted facts Para. 55-61 (exhibit P11 of bundle A(2))
<b>PW13</b>	CO 18368 WONG Mei-yan	Guard Officer	Not summoned to Court
<b>PW14</b>	CO 18313 CHIM Tin- yan	Guard Officer	Not summoned to Court
<b>PW15</b>	CO 17259 LO Sze-kit	Guard Officer	Not summoned to Court
<b>PW16</b>	Customs Senior Inspector CHO Xian-long	ID Parade Supervisor	Admitted facts Para. 72-76, 85- 92 (exhibit P100 & P101)
<b>PW17</b>	Customs Senior Inspector TSANG Hoi ting	ID Parade Supervisor	Admitted facts Para. 77-84, (exhibit P98, P99, P102 & P103)
<b>PW18</b>	SCO 12170 MAK Chung-yin	Computer Forensic Examination on D1's & D2's Mobile Phones	Admitted facts Para. 93-96 (exhibit P94-P95 of bundle F)
<b>PW19</b>	DPC 8272 TSANG Pak-ho	Interviewing Officer (D1)	Admitted facts Para. 36 (exhibit P96 – D1's mobile phones)

	<u>Name</u>	<u>Role</u>	<u>Attendance at Court</u>
<b>PW20</b>	Labour Officer LO Yuan-bing	Investigating Officer, ID Parade Officer	20.8.2021 (AM) EIC Mitchell XXN CHAU S.C. (Nil) XXN Kelly  27.8.2021 (AM) XXN Kelly  Admitted facts Para. 97  1 statement dated 25.11.2019 produced as exhibit P104 of bundle D pursuant to section 65B of Cap 221
<b>PW21</b>	Labour Officer WAN Chi-kin	Policy on Supplementary Labour Scheme	20.8.2021 (AM) EIC Mitchell  Admitted facts Para. 98-101 (exhibit P105 & P105A of bundle D)  2 statement dated 23.12.2019 & 16.4.2020 produced as exhibit P105 & P105A of bundle D respectively pursuant to section 65B of Cap 221
<b>Immigration officers</b>			
<b>PW22</b>	Immigration Officer LAU Wing-kei, Stephen	Immigration policy on imported workers	13.8.2021 (AM & PM) EIC Mitchell
<b>PW23</b>	Immigration Officer MOK Ho-yin	Immigration record of D1	20.8.2021 (AM) EIC Mitchell
<b>PW24</b>	Immigration Officer WONG Kwai-leung	Immigration record of D1 (certification)	20.8.2021 (AM) EIC Mitchell
<b>PW25</b>	Immigration Officer MA Man-ting	Immigration record check of job applicant(s)	13.8.2021 (PM) EIC Mitchell
<b>PW26</b>	Immigration Officer LEUNG Wun-yan	Immigration record check of job applicant(s)	20.8.2021 (AM) EIC Mitchell

	<b><u>Name</u></b>	<b><u>Role</u></b>	<b><u>Attendance at Court</u></b>
<b>PW27</b>	Immigration Officer CHAN Pui-ching	Immigration record check of job applicant(s)	20.8.2021 (AM) EIC Mitchell
<b>PW28</b>	Immigration Officer KWOK Ka-kin	Immigration record check of job applicant(s)	13.8.2021 (PM) EIC Mitchell
	<b>Other public officers</b>		
<b>PW29</b>	Assessor of the Inland Revenue Department YUNG Wai-yan	Inland revenue record	Admitted facts Para. 102-104 (exhibit P82 of bundle E)
<b>PW30</b>	Land Registration Officer LI Kin-hang	Land record	Not summoned to Court
<b>PW31</b>	Land Registration Officer CHAN Cho- yee	Land record	Admitted facts Para. 107-108  1 statement dated 29.9.2020 produced as exhibit P106 of bundle E pursuant to section 65B of Cap 221
<b>PW32</b>	Housing Officer FUNG Wai-yee	Public housing record	Not summoned to Court
<b>PW33</b>	Bank Operation Officer of Hang Seng Bank Limited WONG Sze-long	Banker's affirmation	Admitted facts Para. 105 (exhibit P83 of bundle E) Section 20 of Cap 8
<b>PW34</b>	Operation Manager of the HongKong and Shanghai Banking Corporation Limited TANG Wan-pong	Banker's affirmation	Admitted facts Para. 106 (exhibit P84 of bundle E) Section 20 of Cap 8
<b>PW35</b>	To be ascertained	Persons/Officers to complete the chain of evidence	