IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC(I) 15

Suit No 3 of 2019 (HC/Summons No 2109 of 2019 and SIC/Summons No 35 of 2019)

Between

The Star Entertainment QLD Ltd

… *Plaintiff*

And

Wong Yew Choy

… *Defendant*

JUDGMENT

[Contract] — [Illegality and public policy] — [Section 5(2) Civil Law Act (Cap 43, 1999 Rev Ed)]

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v
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Jeremy Lionel Cooke IJ
21, 22 August 2019.

7 July 2020

Jeremy Lionel Cooke IJ:

Introduction

1 There are two applications before the Court, namely:

(a) the Plaintiff's application for summary judgement under O 14 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") for the sum of AUD $43,209,853.22; and

(b) the Defendant's application to strike out the claim under O 18 r 19 of the ROC on the grounds that the sums claimed are for gambling losses incurred by the Defendant at the Plaintiff's casino in Queensland, Australia, and that the claim falls foul of s 5(2) of the Civil Law Act (Cap 43, 1997 Rev Ed) ("the Act").

2 The Plaintiff relied on six affidavits from various personnel in its organisation who had dealings with the Defendant and the Defendant relied on three affidavits where he was the deponent.

The background

3 The Plaintiff is a public company limited by shares and is registered in Queensland, Australia. Its principal business activity lies in the provision of gaming services and it operates a casino called The Star Gold Coast in Queensland. The Defendant is a Singapore citizen who was a patron at that casino between 26 July 2018 and 2 August 2018. He is a seasoned customer of casinos, including The Star Sydney, which is operated by a company in the same group of companies as the Plaintiff.

4 The Plaintiff alleges, but the Defendant denies, that prior to his arrival at the Queensland casino, he agreed to the use of "the Blank Replacement Cheque" which had been provided by him to The Star Sydney during his visit there in May 2017. That cheque had not been utilised as a result of the Defendant's gaming at The Star Sydney but was dishonoured when completed by the Plaintiff. The cheque was presented in September 2018 in respect of the gaming losses which the Defendant allegedly sustained as a result of his visit to The Star Gold Coast in July or August 2018.

5 The Plaintiff alleges that the Defendant was well aware that it was customary to provide such a blank cheque, prior to gambling, for completion by the casino in respect of any gaming losses, and that he agreed to the use of the Blank Replacement Cheque as a means of paying any losses he suffered at the Plaintiff's casino prior to his arrival there on 26 July 2018. The Plaintiff had arranged for the cheque to be couriered to Sydney in order to be available for

that purpose. On arrival at The Star Gold Coast, the Defendant executed a Cheque Cashing Facility ("CCF") application form requesting a CCF limit of AUD $40 million. When the application was accepted, the CCF Agreement was concluded by the Plaintiff and entailed various express, and arguably, implied terms, the latter of which essentially tallied with the provisions of the Bills of Exchange Act (Cap 43, 2004 Rev Ed) ("the Bills of Exchange Act"). The relevant express terms were as follows:

> I agree that the CCF & any cheques presented under the CCF will be subject to laws in force in New South Wales, Australia & I submit to the jurisdiction of the Courts of that State. In any proceedings under the CCF or in relation to any cheque presented under the CCF I expressly waive any right to object to any proceedings being brought in any Court of competent jurisdiction. I agree that service of any proceedings commenced by [the Plaintiff] against me may be effected by any one or more of the following means: (i) posting it to the address specified as my home address on this application or the Account Reference Card held by [the Plaintiff], (ii) posting it to the postal address in this application (iii) emailing it to the email address in this application or (iv) posting it or emailing it to any other address (postal or email) which I advise to [the Plaintiff] at the time of writing.
>
> I agree to indemnify [the Plaintiff] for all reasonable losses, liabilities & costs including, but not limited to reasonable legal costs incurred by [the Plaintiff] on a solicitor & own client basis, in relation to enforcement of any rights under the CCF or in relation to my deposit accounts or in relation to the proceedings to recover monies owing by me to [the Plaintiff] as a result of a cheque being dishonoured.
>
> If I provide a replacement cheque to [the Plaintiff] with the amount & date incomplete, I authorise [the Plaintiff] to complete details on that cheque in an amount equal to amounts outstanding under my CCF on settlement of any relevant program & to date the cheque on the date of banking either required by law or as otherwise agreed between me & [the Plaintiff].

6 As part of the CCF arrangements, the defendant also signed third-party authorisation forms empowering his assistant, Mr Chan:

(a) to operate the CCF up to the agreed limits by obtaining chips for gaming; and

(b) to sign cheques on his behalf (which he duly did for AUD $40 million and AUD $10 million) and Chip Purchase Vouchers which were issued to the Defendant for exchange for chips with which he could bet at the private salon at the casino on the basis of the credit allowed to him by the Plaintiff on the security of the cheques.

7 The Defendant and his entourage of some 28 people were flown to Queensland at the expense of the Plaintiff and housed in the casino's private salons where the Defendant played the game of baccarat. It is accepted by the Plaintiff that the Defendant encountered four dealing errors made by the casino's dealers which took place in the late evenings and early mornings between 29 July 2018 and 1 August 2018.

8 The Plaintiff took corrective or remedial action and made goodwill payments of AUD $600,000 to the Defendant as a token of regret for the disappointment felt by him. It is said that the Defendant suffered no losses from the dealing errors and none has been alleged. It can be said that he, in fact, benefited from the goodwill payments. After these dealing errors, the Plaintiff's gaming management met with the Defendant three times. At the first meeting on 30 July 2018, personal apologies were offered and during the two subsequent meetings on 1 August 2018 he was provided with a letter of apology signed on the Plaintiff's behalf in two formats, the later letter superseding the former and "guaranteeing" the absence of future failures, as opposed to merely assuring it.

9 The terms of the letter of 1 August 2018 are relied on by both parties in the context of a dispute as to an agreement which was allegedly reached at that

time. It is the defendant's case supported by his affidavit that, to quote para 10 of the defence:

> The [D]efendant denies that he incurred debts owing to the [P]laintiff or that he is liable to the plaintiff at all. On or around 1st August 2018, the [P]laintiff and the [D]efendant agreed that the [D]efendant would not have to pay for any of the losses that had been incurred up to 30th July 2018, no further mistakes would be made by the Star's dealers when attending to the [D]efendant. And if there was a further mistake, the [D]efendant would not be required to pay for any losses at all."

10 Particulars of the agreement are then given in the particulars to para 10 of the defence – sub-paragraphs (a) through to (j).

11 This agreement is denied by the Plaintiff's witnesses on affidavit. They point to the terms of the letter itself as containing no such agreement. The Defendant's case is that an agreement was reached and that the letter, although not containing the full terms of it, is some evidence in support of what is said to have been agreed.

12 At para 10(k) of the defence, the Defendant maintains that he resumed gaming on 1 August 2018 in reliance on the agreement that had been reached. But on the same day, the Plaintiff's dealers made the same mistake that had been previously made which resulted in the Defendant's immediately stopping his gaming.

13 The Defendant has an alternative plea of estoppel based on the same allegations of fact all of which are denied by the Plaintiff.

14 The Plaintiff says that the Defendant departed from the Star Gold Coast on the 2 August 2018 and in the process, known as a "settlement", it was calculated that the total amount owed by the Defendant to the Plaintiff pursuant

to the CCF agreement amounted to the sum to which I have previously referred, namely some AUD $43 million approximately. The details of the calculations were set out in affidavits filed on behalf of the Plaintiff. In early September 2018, the Plaintiff completed the details for the Blank Replacement Cheque pursuant purportedly to the authorisation given under cl 7 of the CCF agreement. The cheque was dated the 7 September 2018 and was made payable to the Star Gold Coast for a Singapore dollar sum equivalent to the amount outstanding in Australian dollars. Shortly after the Defendant's return to Singapore, he instructed his bank to stop payment on the replacement cheque with the result that on presentation, it was dishonoured.

15 In addition to the defence based on the oral agreement to which I have referred, the Defendant has two additional grounds for resisting the claim.

(a) First, the Defendant maintains that the Blank Replacement Cheque which was presented was completed without his authority for two distinct reasons.

(i) The first reason is that there were no losses to be covered by it because of the oral agreement alleged by the Defendant.

(ii) The second reason is that quite apart from this, the Blank Replacement Cheque had been furnished by the Defendant in 2017 for the payment of any losses incurred in the Sydney casino to a different company from the Plaintiff albeit one in the same group. He says that he never authorised its use to pay for losses incurred in 2018 at the Gold Star in Queensland.

(b) The second ground is that the Plaintiff is, by virtue of s 5(2) of the Act, unable to bring an action to recover money allegedly won on a wager.

The Plaintiff's summary judgment application and the strike-out application

16 The law relating to summary judgment application and the principles to be applied were not in dispute between the parties. As put by the Plaintiff, it must show that it has a *prima facie* case and once shown, the Defendant then has the evidential burden to show that there is an issue or question in dispute which ought to be tried.

17 Reliance is based on various authorities to the effect that the Court would not grant leave to the defendant if the defendant provides a mere assertion contained in an affidavit of a situation which forms the basis of his defence and where such an assertion is incredible or lacking in precision or is inconsistent with undisputed contemporary documents or other statements by the same deponent or is inherently improbable in itself. The Judge then has a duty to reject such assertion or denial, thereby rendering the issue not triable. In other words, summary judgment can be granted where the plaintiff can satisfy the Court that even on the defendant's version, he is entitled to judgment or if the defendant's version can be seen not to be truthful or capable of belief.

18 The mere fact that the Defendant supports his defence by way of an affidavit does not mean that the Court must accept the evidence as if it was accurate. The Court must independently assess, having regard to the evidence as a whole, whether the defence is credible. If it is found not to be credible, after regard to its inconsistency with contemporaneous documents, its inherent

plausibility and other compelling evidence, the Court may give summary judgment.

19 The Plaintiff alleges that the allegations and contentions raised by the Defendant are not *bona fide* because they are inconsistent with contemporary documentary evidence and no valid triable issues in fact have been raised.

20 On the face of the pleadings, and the Plaintiff's evidence, there is, subject to the s 5(2) defence under the Act, a valid *prima facie* claim made by the Plaintiff. Under cl 7 of the CCF and s 55 of the Bills of Exchange Act, there is a failure to honour the cheque presented in respect of the Defendant's losses at the Gold Star Casino in Queensland. The CCF requests for credit were signed by the Defendant, on his own admission, in the knowledge that they were necessary for him to receive credit for the provision of chip purchase vouchers and gaming chips in due course. The Defendant was a seasoned casino customer and had signed similar forms at the Gold Star Sydney in 2016 and 2017 and doubtless elsewhere also. He authorised the completion of a Blank Replacement Cheque to pay for any gaming losses.

21 The credit advanced and the losses are supported by documents showing the chip purchase vouchers utilised by him to obtain chips and the record of his gaming on each of the days from 26 July 2018 to 1 August 2018, contrary to his allegation that he stopped gaming for an interim period prior to the alleged agreement.

22 Nonetheless, there are, in my judgment, issues of fact which cannot be and should not be determined on a summary judgment application without testing the evidence of witnesses on cross-examination. There are direct conflicts of evidence on two important grounds of the defence put forward. The

first is obviously the alleged oral agreement set out at para 10 of the defence. The Plaintiff says that the alleged oral agreement, of which the Defendant alone gives evidence in defence, is unsupported by any contemporaneous document including the 1 August 2018 letter and that the bare assertion of such an agreement does not give rise to a triable issue.

23 As to that, the dispute turns on what happened at meetings on 30 July 2018 and 1 August 2018. The Defendant says that on 30 July 2018, he told Mr Arbuckle of the Plaintiff that if the latter wanted him to resume gaming, he would not pay for any of the losses that had been incurred up to that point on account of the mistakes made. He requested Mr Arbuckle to provide a written guarantee. Mr Arbuckle, however, says that during the 30 July 2018 meeting, there was no discussion regarding the Defendant's alleged losses at all. He says, however, on the 1 August 2018, the Defendant said that unless the Plaintiff gave an assurance that there would be no further mistake, he would not pay a single cent for the sums due and owing at that point in time. Hence, the guarantee letter was issued following that conversation.

24 The second dispute is the alleged lack of authority to complete a cheque provided in 2017 for payment of potential losses in Sydney. Again, there is conflict of evidence on this from the Defendant on the one hand and Ms Yaw of the Plaintiff on the other. The Defendant points to the lack of any documentary support for the alleged agreement to the use of this cheque or even of instructions for it to be couriered to Queensland prior to the Defendant's arrival there in 2018.

25 I have concluded that these issues cannot be determined short of a trial. In the context of an oral agreement which is not said to be contained in a particular document, it is not possible simply to point to a letter and determine

whether or not such an agreement was or was not reached by reference to its terms. It is best, in the present circumstances, if I say nothing more about the contentions of the parties beyond saying that they raised arguable claims in either direction, and that the accuracy and truthfulness or otherwise of the affidavit evidence can only be determined when that evidence is tested in cross-examination. That is ordinarily the case in relation to oral agreements alleged by one party unless there are clear and overwhelming reasons to show that such an agreement could not have been reached.

26 In consequence, the Plaintiff's application for summary judgment cannot succeed because triable issues arise both as to the alleged debt due and as to the validity of the cheque and whether there was authority to insert the sum in question and present it as the Plaintiff did.

27 The third ground of defence is also the ground on which the Defendant seeks to strike out the Plaintiff's claim under O 18 or O 19 of the ROC, namely the terms of s 5(2) of the Act. The Civil Law Act was originally enacted in 1909 but has been amended since. The relevant subsection provides as follows:

> No action shall be brought or maintained in the Court for recovering any sum of money or valuable thing alleged to be won upon any wager or which has been deposited in the hands of any person to abide the event on which any wager has been made.

28 Then follow ss (3) and 3(*a*), which provide for exceptions to this principle, none of which, as is recognised by the Plaintiff, is directly applicable to the present case.

29 A cheque or bill of exchange represents a negotiable instrument distinct from the underlying transaction for which it is utilised and it might therefore be thought not to fall within the terms s 5(2) of the Act particularly as special

considerations apply to such bills of exchange as equivalent to cash. The arguments on cross claims are therefore affected by the nature of the instrument as many of the authorities demonstrate. Claims on cheques almost invariably attract summary judgment with defences and cross-claims on the underlying transaction to be determined by the Court at a later stage.

30 The Plaintiff concedes, however, that if the claim was made on a cheque which represented a sum of money payable in respect of a wagering transaction, and s 5(2) applies to bar a claim for the money in respect of that wagering transaction, the claim on the cheque would likewise be barred. That concession was, in the light of the authorities and particularly, the decision in the *Star City Pty Ltd v Tan Hong Woon* [2002] 1 SLR(R) 306 ("*Star City*"), and [15] and [24]–[39] thereof, rightly made as the other authorities also indicate.

31 The issue raised by the defence is one of law, not fact, and such factors as might be relevant to the consideration of the public policy in Singapore are not seriously in issue. Whatever difficulties may be presented to an International Justice of the Singapore International Commercial Court in determining the public policy of Singapore, those difficulties are as readily resolved now at the interlocutory stage as later after evidence at a hearing has been adduced.

32 In essence, what the Plaintiff says is that the prohibition on recovery of gaming debts provided by s 5(2) of the Act is inapplicable or should not be applied because it is not contended by the Defendant that the CCF agreement is invalid under the law of Queensland that governs it, nor that the gambling debt is irrecoverable as a matter of the law of that jurisdiction. A breach of that agreement is therefore actionable in Singapore which should apply the proper law of the contract and the public policy which underlies s 5(2) has no application to a valid foreign debt. It was a breach of the express terms of cl 7

of the CCF agreement or of the implied terms akin to the provisions of the Bills of Exchange Act when the Defendant failed to honour the Blank Replacement cheque provided under cl 7.

33 It was tacitly, if not expressly, accepted by the Plaintiff that the object of the CCF agreement was to enable patrons to gamble on credit, as the very title of the agreement itself and the nature of surrounding arrangements made clear. But it was said by the Plaintiff that this is not an issue under the law of Queensland and judgment could have been obtained there with agreed jurisdiction in that Court by the reason of cl 4 of the CCF agreement. The public policy of Singapore does not require the Court to refuse to enforce the gaming debt which was valid under that law.

34 I was referred to a number of authorities in relation to s 5(2) of the Act, as well as to the terms of the Act in its amended form, to the Casino Control Act (Cap 33A, 2007 Rev Ed) ("the Casino Control Act"), and to statutes to which the Act itself refers, as well as parliamentary debates. It is clear from the pleadings that the claim is made for a debt due under the CCF agreement and alternatively under s 55(1) of the Bills of Exchange Act in respect of the dishonoured Blank Replacement Cheque which represents the amount outstanding under the CCF, "on settlement of any relevant programme", which self-evidently means the gaming account maintained by the Defendant with the Plaintiff, which records his gaming wins and losses.

35 The debt incurred by the Defendant to the Plaintiff is a gambling debt incurred following the advancement to the Defendant of credit to enable him to gamble against the security of the two cheques for AUD $40 million and AUD $10 million signed by Mr Chang on his behalf but never banked. The cheque

which was presented and dishonoured had been completed by insertion of the sum which represented his net losses as calculated by the Plaintiff.

36 It is also clear that the Act can properly be described as a, "procedural statute", in as much as it applies to the bringing of proceedings in the Singapore Court regardless of the proper law which governs the claim, whether that claim is made in contract or under the equivalent of the Bills of Exchange Act in another jurisdiction. This is clear from the following.

37 The wording of s 5(2) itself says that, "No action shall be brought or maintained in the Court…" The Court concerned is the Singapore Court, whether the SICC or any other division of that Court. This is confirmed by the decision of G P Selvam J in *Star Cruise Services Limited v Overseas Union Bank Limited* [1999] 2 SLR(R) 183 ("*Star Cruise*") at [86] to [91] which is to the same effect. There he stated that in relation to the predecessor provision (in materially identical terms), the prohibition on recovery expressed in the words, "No action shall be brought", covered all actions irrespective of where the cause of action arose, citing various textbooks to the same effect in relation to the equivalent wording in the English Gaming Acts of 1845 and 1892. The Singapore Court of Appeal in *Star City*, to which I have already referred, describes the provisions of s 5(2) of the Act as "procedural" so that it fell to be applied by the Singapore Courts as part of the law of the forum (see in particular [29]). The Court endorsed Selvam J's conclusions on this point at [24]–[26] when applying the provision to recovery of gambling winnings represented by five dishonoured cheques.

38 The Plaintiff also relied on an earlier High Court decision of Chao Hick Tin J (as he then was) in *Las Vegas Hilton Corp v Khoo Teng Hock Sunny* [1996] SLR(R) 589 ("*Las Vegas*") and the Singapore Court of Appeal decision in *Liao*

Eng Kiat v Burswood Nominees Limited [2004] 4 SLR(R) 690 ("*Burswood*") as representing the current state of the law in relation to s 5(2) of the Act and the public policy which underlies it. Both decisions have, however, effectively been distinguished, disapproved or nullified in later High Court and Singapore Court of Appeal decisions. The first was disapproved in the *Star Cruise* decision at [92] and distinguished in the Court of Appeal decision in *Star City* at [32], the second in *Poh Soon Kiat v Desert Palace Inc* [2010] SLR 1129 ("*Desert Palace*").

39 In the *Star Cruise* decision, Selvam J at [92] recorded that in the *Las Vegas* case (a claim on a credit facility agreement governed by the law of Nevada, where the defendant had lost heavily at the claimant's casino in Las Vegas and overdrawn on the facility), the Court did not receive from counsel the benefit of fully researched submissions on the law. Selvam J said that the propositions and conclusions to which he had come were based on authorities which had not been cited to the earlier Court.

40 In the *Las Vegas* decision, the Judge had held that the cost of credit facility agreement in question was governed by the law of Nevada and was valid under that law. The Singapore Court should enforce it and that there was no public policy against such enforcement despite the existence of the predecessor version of s 5(2) of the Act, which he held to be inapplicable because the loan agreement was not governed by the law of Singapore. The loan was therefore treated as a loan and the claimant as a claimant on that loan regardless of its connection to the gaming loss sustained by the defendant. Selvam J held that in his case, the loans were made for gaming purposes and would fall foul of the Act if they were used as a means of recovery of winning bets, as would claims for money on the cheques given for $50 million as security under the CCF.

41 Of much greater significance, however, are the Singapore Court of Appeal decisions in *Burswood* and *Desert Palace* to which I have already referred. They require a greater degree of consideration. Both parties accepted that neither of these decisions was technically binding upon me because (i) *Burswood* was a case about registration and enforcement of a foreign judgment for a gaming debt, where that debt was enforceable under its proper law; and (ii) *Desert Palace* was similarly a case where a foreign judgment was in issue but where it was found not to be a money judgment capable of enforcement at common law; (iii) the result was that the extensive comments of the Court on s 5(2) of the Act, and the public policy considerations applicable thereto, were all obiter. It is worth pointing out that those comments occupied [81]–[126] of the judgment of the Court in *Desert Palace*.

42 In the circumstances, the Defendant submitted that the decision which was binding on me was the Court of Appeal decision in the *Star City* in 2002. There, five cheques had been dishonoured which had been furnished by the defendant in exchange for chips for gaming at the table of a casino in Sydney which was licensed by the relevant Australian authorities. Star City sought to recover the balance of the gambling losses payable after limited payments had been made by the defendant.

43 As previously stated earlier in this judgment, the Court in *Star City* found that, regardless of the location of the wagering contract or lawfulness or enforceability of that contract according to the governing law of the loan contract or the negotiable instrument, s 5(2) of the Act prevented recovery. There was no foreign judgment in issue in *Star City* as was the case in *Burswood* and *Desert Palace*. The Court, having held that the Act was procedural in nature with the result that the Singapore Court had to apply it to any proceedings before it (which applies just as much to me sitting in the Singapore International

Commercial Court as to any other Court in Singapore) and had to examine the substance of the transactions between the parties, characterised the action on the cheques as an action for the recovery of a sum of money alleged to be won on wagers.

44 The compulsory application of the Act meant that there could be no recovery. The Court in *Star City* recognised that in *Star Cruise*, the proper law of the contract was the law of Singapore, but nonetheless approved the judgment of Selvam J and read it as requiring the Court to apply the public policy underlying the Act to prevent the recoverability of gaming winnings regardless of the form that the action took.

45 The Defendant said that the *Star City* decision was directly on point in the current case, and that the judgment in *Star Cruise* which was endorsed in this Court of Appeal decision meant that the Plaintiff could not recover in the present action. The fact that the cheque in dispute here was a Blank Replacement Cheque and not the cheques furnished in exchange for the chips was nothing to the point. Here, there was no attempt to dress up the claim as recovery of a loan, it being obvious and accepted that the claim was for money lost by the defendant in gaming. Both of these decisions made it clear that the public policy which underlies that provision in s 5(2) of the Act is a statutory one which does not bar all gambling at all cost. The Court of Appeal in *Star City* said at [30]–[32]:

> 30. What then is this aspect of local public policy that militates against the recovery of moneys won in foreign wagering contracts which are valid and enforceable overseas? It is clear that gaming and wagering contracts were never considered to be illegal in common law. The distinction which the law makes between wagering contracts and others is therefore entirely the creation of statute. In line with the position in England, the Singapore Legislature has long departed from the historical position that gambling and gaming, especially when on credit, is a social vice that has to be eradicated at all costs. It now recognises that gambling can be permitted for its entertainment

value if it is strictly controlled and regulated by the relevant authorities. Gambling *per se* is no longer considered to be contrary to the public interest and this accounts for the various forms of legalised gaming and gambling which currently exists in Singapore such as 4-D, Toto, the Big Sweep, the Singapore Turf Club, *etc*. Therefore there is no general principle of public policy in Singapore, against the recovery of money lent for the purposes of gambling abroad, so long as the transaction is indeed a genuine loan and one which is valid and enforceable according to that foreign law.

31. However, what is objectionable is courts being used by casinos to enforce gambling debts disguised in the "form" of loans. Valuable court time and resources that can be better used elsewhere are wasted on the recovery of such unmeritorious claims. The machinery of the courts cannot be used indirectly to legitimise the recovery of moneys won upon wagers overseas when similar relief would be refused for moneys won upon wagers in Singapore. Hence in order to give full effect to s 5(2) of the Civil Law Act, which provides that no action can be brought or maintained to enforce gambling debts, the courts of the forum cannot be prevented by foreign law from investigating into the true nature of the transaction. The courts of justice must remain out of bounds to claims for moneys won upon wagers, however cleverly or covertly disguised: *Star Cruise Services Ltd v Overseas Union Bank Ltd* ([24] supra). It is in this sense that the earlier decision in *Las Vegas Hilton Corp v Khoo Teng Hock Sunny* ([22] supra) can be distinguished; having felt that there is no public policy against gambling per se, the court naturally did not go further to re-characterise the transaction. However, once it is recognised that the courts should not, as a matter of principle and public policy, act as gambling debt collectors for foreign casinos, we are then obliged to investigate further according to the lex fori.

32. Although this can have the unhappy consequence that Singapore may be viewed by foreign casino operators as "safe havens" for gamblers with assets situated here, the fact remains that gambling debts are debts of honour and not legal debts recoverable in the courts. We consider that these are the risks and consequences that casinos in the conduct of their ordinary businesses have to bear. It is but a small price to pay in exchange for the huge profits that such businesses reap by trading in games of chance. If a result of this case is that "credit" facilities will be less readily granted to local gamblers, so be it. The courts will not be concerned with such considerations but must stand guided by the principle that the courts of justice must remain out of bounds to claims based on gaming debts. We emphasise that our conclusion on the operation of s 5(2) of the Civil Law Act merely negatives the enforcement but not the

> validity of gaming contracts; the casinos can always attempt to enforce their causes of action elsewhere.

46 *Burswood* is an unusual decision in a number of respects. First, its historical place in the run of relevant decisions is in 2004, namely post the *Las Vegas* decision in 1996, post the *Star Cruise* decision in 1999 and post the *Star City* decision in 2002. *Star Cruise* was not, however, referred to in the decision at all and the appellant had not cited it in relation to the public policy elements that were relevant. Second, two of the Court of Appeal Judges were the same as those who sat in the *Star City* decision, some two years earlier, namely Yung Pung How CJ and Chao Hick Tin JA, the latter being the Judge in the *Las Vegas* case to which I've already referred. Because the *Star City* decision referred and approved Selvam J in the *Star Cruises* case, the Court cannot have been unaware of that decision taken in 1999, and although not referred to, it is hard to imagine that it could have escaped their attention. Third, the Court was concerned in *Burswood* with the registration of a default judgment entered in Western Australia under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) ("the Reciprocal Enforcement of Commonwealth Judgments Act"). The casino had obtained the Australian judgment in respect of a cheque provided by the gambler in exchange for chip purchase vouchers. The fundamental question with which the Court was concerned was ultimately whether the public policy in favour of enforcing foreign judgments should outweigh the public policy that underlay s 5(2) of the Act. It was argued that the claim was not for money won on a wager but for enforcement of a judgment debt in respect of a loan. The Court found on the first issue it had to decide that the claim made in Western Australia on the dishonoured cheque was for money won on a wager (see [14]–[21] of *Burswood*). The loan under the CCF in this case, as in *Star City*, was not treated as being a true loan, as no money was advanced at all, and the purpose of the CCF was to enable patrons to gamble on

credit with chips, the cheques being part of the CCF arrangement.

47 The Court found at [24] in *Burswood* that s 5(2) of the Act and s 3(2)(*f*) of the Reciprocal Enforcement of Commonwealth Judgments Act encapsulated different standards in application of the public policy defence. Whereas the Act elucidated Singapore's domestic public policy on the enforcement of gambling debts, a rule of public policy as it applied to registration of foreign judgments under the statute in question was very different. The latter require a higher threshold of public policy to be met in order for registration of a foreign judgment to be refused. The Court went on to say, at [44]–[46], that public policy had moved on:

> 44. Second, we observed in Star City ([9] supra) at [30] and [31] that:
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> > … [Singapore] now recognises that gambling can be permitted for its entertainment value if it is strictly controlled and regulated by the relevant authorities. Gambling per se is no longer considered to be contrary to the public interest and this accounts for the various forms of legalised gaming and gambling which currently [exist] in Singapore …
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> However, what is objectionable is courts being used by casinos to enforce gambling debts disguised in the 'form' of loans. Valuable court time and resources that can be better used elsewhere are wasted on the recovery of such unmeritorious claims. The machinery of the courts cannot be used indirectly to legitimise the recovery of moneys won upon wagers
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> 45. As we recognised two years ago, gambling *per se* is not contrary to the public interest in Singapore. To date, the stand we took in *Star City* has been bolstered by the fact that Singapore's societal attitudes towards gambling have evolved even further, as evinced by the fact that the Government is giving serious consideration to the idea of building a casino on the island of Sentosa. In this respect, we found this passage from *Intercontinental Hotels Corporation (Puerto Rico) v Golden* 15 NY 2d 9 (1964) at 14–15 instructive:
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> > 'Public policy is not determinable by mere reference to the laws of the forum alone. Strong public policy is found in prevailing social and moral attitudes of the

> community. … It seems to us that, if we are to apply the strong public policy test to the enforcement of the plaintiff's rights under the gambling laws of the Commonwealth of Puerto Rico, we should measure them by the prevailing social and moral attitudes of the community which is reflected not only in the decisions of our courts in the Victorian era but sharply illustrated in the changing attitudes of the People of the State of New York. The legalization of pari-mutuel betting and the operation of bingo games, as well as a strong movement for legalized off-track betting, indicate that the New York public does not consider authorized gambling a violation of "some prevalent conception of good morals (or), some deep-rooted tradition of the common weal.'…
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> 46. We did not think that there were any public policy grounds militating against registration of the Australian judgment which would offend a fundamental principle of justice or a deep-rooted tradition of Singapore. Neither did we have any evidence before us to indicate that the general community in Singapore would be offended by the registration of a foreign judgment on a gambling debt that was incurred in a licensed casino. If anything, we were of the opinion that the prevalent conception of good morals in the Singaporean community at large would be against Singaporeans who ran up gambling debts in overseas jurisdictions and sought to evade their responsibility for those debts when judgment had been issued against them."

48 In 2009, in *Desert Palace*, the Court of Appeal, with an entirely different constitution, having determined that a suit in Singapore based on a Californian judgment could not succeed because that judgment was not a money judgment, then went out of its way to criticise the decision of the Court in *Burswood*. Having held that the Californian judgment was not enforceable at common law, its comments thereafter were obiter, but nonetheless were forcefully and clearly expressed with full consideration of the public policy which was said to underlie the Act. There is no purpose served in extensive citation of paragraphs of the judgment of the Court. But the headnote accurately records the part of the judgment dealing with this.

> In so far as [*Star City*] and [*Burswood*] suggested that gambling per se was no longer contrary to the public interests of

> Singapore because the legislature had allowed for various types of legalised gambling (such as 4-D, TOTO, the Big Sweep, the Singapore Turf Club, et cetera, as well as the development of the Integrated Resorts with casinos), this could not be supported, as it only meant that regulated gambling was not contrary to public policy and there had been nothing to indicate a detraction from the general policy encapsulated in Section 5 of the Act.
>
> The decision in [*Burswood*] on the registrability of the Western Australian's judgment should be reviewed if a similar issue were to come before the Court of Appeal, as it was contrary to the express words of Section 3(2)(f) of the Reciprocal Enforcement of Commonwealth Judgments Act, which provided that the Court should not register a foreign judgment if its underlying cause of action was contrary to public policy. The underlying cause of action of the Western Australian's judgment in that case was a gambling debt and it was unenforceable by reason of Section 5(2) of the Act.

49 The elements of public policy to which the Court drew attention in relation to gambling were as follows (see [83] of *Desert Palace*):

(a) to suppress gambling on credit as opposed to gambling *per se*;

(b) to protect property from capture by gamblers;

(c) to declare that the Courts of justice were closed to gamblers and the Courts would not help to settle or collect gambling debts;

(d) the need to distinguish between social gambling as part of a leisure activity, state-sponsored lotteries and sweepstakes and the like, on the one hand, and what the public regarded as effectively "hard core gambling" on the other.

50 At [92], the Court said that it did not consider that the *Burswood* court had been justified in saying that gambling was no longer contrary to Singapore's public policy. In the context of a case about the registration of a foreign

judgment entered in respect of a gambling debt, the Court entered into an extensive discussion, at [93]–[100]:

> 93 In *Star City (CA)*, this court justified its view that gambling was no longer contrary to Singapore's public interest partly on the basis that gambling *per se* was not illegal at common law and partly on the basis that "various forms of legalised gaming and gambling … such as 4-D, Toto, the Big Sweep, the Singapore Turf Club, etc" (*id* at [30]) existed in Singapore; this reasoning was affirmed in *Burswood Nominees*. With respect, although gambling is not illegal at common law, s 5(1) of the CLA makes all wagering or gaming contracts entered into locally null and void, while s 5(2) makes all gambling debts, wherever incurred, irrecoverable by an action in Singapore. As for the existence of legalised gambling in Singapore, this does not necessarily mean or imply that *all other forms of gambling*, *ie*, gambling unregulated by statute, are no longer against Singapore's public policy. It simply means that *regulated* gambling will not be regarded as being contrary to public policy in this country (because, *inter alia*, the conditions under which such gambling takes place are regulated so as to minimise and/or reduce the incidence of organised gambling being controlled by syndicates, and the attendant law and order problems).
>
> …
>
> 97 At a more general level, regulated casino gambling, when carried out as part of the larger business of an integrated resort which is intended to provide wholesome entertainment and leisure for the public, is perceived to generate *positive* gains for the economy. Controlled casino gambling may not be contrary to the legal policy of Singapore and also the public policy of this country (in so far as legal policy reflects public policy), but gambling in general, especially unregulated gambling at large and gambling on credit, is, in our view, contrary to Singapore's public policy. This is evident from the retention of s 5 of the CLA in the statute book.
>
> 98. To reiterate, the existence of *regulated* gambling is not inconsistent with unregulated gambling and gambling on credit being against public policy in Singapore. Furthermore, the court's affirmation at [45] of *Burswood Nominees* ([10] *supra*) of its earlier stand in *Star City (CA)* ([17] *supra*) – *viz*, that gambling *per se* is no longer contrary to Singapore's public policy – is also not justified in view of the *elaborate legislative and regulatory framework* set out in the current CCA, which was enacted by Parliament (initially as the Casino Control Act

> 2006 (Act 10 of 2006) ("the 2006 CCA")) to, *inter alia*, "make provision for the operation and regulation of casinos and gaming in casinos" (see the preamble to the 2006 CCA).

51 Moreover, s 3(e) of the Act itself as amended, excludes contracts which involve the extension of any form of credit for gaming. The Court in *Desert Palace* went on to refer to the Casino Control Act which continued to prevent licensed casinos extending credit or loans to Singaporean citizens unless they fell within the definition of a "premium class", although the casinos could do so for someone who was not a citizen or permanent resident of Singapore.

52 At [103], the Court said this:

> 103. Clearly gambling contracts issued by legal gambling operators in Singapore such as the Singapore Pools and Singapore Turf Club, that are based on credit shall continue to be unenforceable to ensure that the local gambling operators do not promote gambling to locals by giving out credit. The general position that gambling is against public policy must be unchanged.

The Court went on to rely on parliamentary debates as well as the terms of the Act, as amended, as demonstrating a concern about the great potential harmful social effect of gambling on credit in particular.

53 As the Court makes clear in *Desert Palace*, the legislation has created specific exceptions to the application of ss 5(1) and 5(2) of the Act. Reference should be made to the terms of ss 3 and 3(a) of the Act which refer to exceptions granted by the executive in relation to particular organisations and by other statutes. I was taken to the terms of the Casino Control Act, the Common Gaming Houses Act (Cap 39, 1985 Rev Ed), the Betting Act (Cap 21, 2001 Rev Ed) and the Remote Gambling Act 2014 (No. 34 of 2014) to which s 3(a) of the Act refers, as well as to the parliamentary debates which were referred to in the *Desert Palace* decision. The exceptions are drawn in specific terms which do

not allow for casinos operating abroad, as opposed to casinos falling within the provisions of the Casino Control Act, namely those licenced under s 49 of that Act. Under s 40 of Casino Control Act, ss 5(1) and 5(2) of the Act are not to apply to gaming contracts with such licensed casinos for the playing of games conducted by the casino or its operator or agents whilst its licence is enforced. Had the legislature wanted to exclude foreign regulated casinos from the effect of s 5(2) of the Act, it could have done so, but it chose to make specific exceptions as set out in s 3(a) and the Casino Control Act only. Control of gaming by regulation and licence in Singapore may or may not be more effective than control by regulation and licence in another jurisdiction, but the legislature has not created an exception for the latter where it has for the former.

54 The Plaintiff's plea that the public policy of Singapore does not require s 5(2) to be applied for the following reasons must therefore fail. The reasons put forward were essentially as follows. First, the gaming took place in Queensland under effective regulation and licence and is therefore controlled. Second, the gambler is an experienced patron of gambling establishments with considerable wealth and experience, who requires no protection as a vulnerable individual. Third, the contract under which suit is brought is governed by the law of Queensland where the contract is valid and enforceable. Fourth, the cheque is a valid negotiable instrument in and of itself. And fifth, if the Defendant had conducted such gambling at a licenced casino in Singapore as a premium player, neither ss 5(1) or 5(2) would apply.

55 These factors or features cannot change the position. An exemption from s 5(2) cannot therefore be justified in the light of the later decision of the Court of Appeal, which discusses these aspects of public policy despite the *obiter* nature of those comments. The result is that the clear words of s 5(2) must take

effect in the manner that the *Star Cruise* decision and the *Star City* decisions require, as well as [22] of the *Burswood* decision itself to which I have referred.

56 The Court of Appeal in *Desert Palace* left two questions open in relation to foreign judgments on gambling debts and their enforceability at common law, having expressed some clear views as to the unsoundness of the *Burswood* decision on registration of foreign judgments and the public policy considerations applicable thereto.

57 The point that is made clear in *Desert Palace* for the present purpose is simply that the dominant public policy consideration provided by the act itself prevails over any other public policy considerations relating to enforcement of foreign judgments by registration. The idea that there should be a distinction between registration on the one hand and common law actions on foreign judgments seems, at least to me, to make no sense. However, whatever the position may be on that, if the position is so for registration of foreign judgments, the conclusion reached in *Star Cruises*, *Star City* and [22] of *Burswood* brooks no argument in a case where there is no foreign judgment involved at all. The Defendant rightly says that the Court cannot countenance an action brought in respect of sums allegedly won on the wagers laid by the Defendant in Queensland in Australia. The Court is not able to countenance a claim brought for sums allegedly won on a wager. The Defendant is entitled to have the claim struck out under O 18 r 19 of the ROC because it has no prospect of success, and because the Act says that no action can be brought for the sums in question.

58 In consequence, the pleadings disclose no reasonable cause of action in themselves, when read in context, as claiming a sum which falls foul of s 5(2) of the Act. The claim can also be characterised as vexatious and an abuse of the

process of the Court on the evidence presented, because it has no prospect of success at all.

59 For all the above reasons, the O 14 application for summary judgment must therefore be dismissed. And the strike out application must be granted.

60 I conclude only by stating that however it much might stick in the gullet and appear unconscionable for a wealthy man to avoid what has been described as a "debt of honour", by reason only of s 5(2) of the Act, particularly if, as I was told was the case here, the defaulter has made substantial money from involvement in the online betting industry and for a Singapore citizen be able to bet with impunity abroad at regulated casinos where he could not do so if he had betted at regulated casinos in Singapore, this is recognised by the Court of Appeal at [32] of the *Star City* decision as a necessary concomitant of a public policy which is protective of Singapore's interests. The legislative policy has limited the effect of s 5(2) of the Act in the light of the economic interest of the country and the desirability of encouraging foreigners to expend their income in licenced casinos here, whether as part of integrated resorts or otherwise, whilst maintaining a paternalistic and controlling hand in respect of its own citizens and their exposure to such activities. The Defendant is not a vulnerable individual who needs to be protected against exploitation, against himself and his own proclivities, but in my judgment, s 5(2) of the Act is clear in its effect and there is no exemption to its terms that can apply in the present case.

Conclusion

61 The action against the Defendant is dismissed for the reasons given.

Jeremy Lionel Cooke
International Judge

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