Star City Pty Ltd (formerly known as Sydney Harbour Casino Pty Ltd) v Tan Hong Woon [2001] SGHC 100

Case Number : Suit 837/2000

Decision Date : 21 May 2001

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Foo Maw Shen and Keoy Soo Khim (Ang & Partners) for the plaintiffs; Tan Kay Khai (Michael Khoo & Partners) for the defendant

Parties : Star City Pty Ltd (formerly known as Sydney Harbour Casino Pty Ltd) — Tan Hong Woon

Contract – Illegality and public policy – Gaming contract – Cheques issued to exchange for gambling chips – Recovery of loan – Claim on dishonoured cheques – Claim on money had and received – Whether claim on gaming contract – Claim prohibited by statute – s 5(2) Civil Law Act (Cap 43)

JUDGMENT:

Cur Adv Vult

1. The plaintiffs (hereinafter referred to as "SC"), who operate a licensed casino in Sydney, instituted the present action to recover from the defendant, Mr Tan Hong Woon, what they alleged were, inter alia, unpaid loans to the latter to enable him to gamble at their casino. Mr Tan contended that section 5 of the Civil Law Act (Cap 43) did not permit SC to sue for what was, in effect, the amount that they won from him when he gambled at their casino in Sydney.

A. BACKGROUND

2. SCs casino in Sydney is licensed under the New South Wales Casino Control Act 1992. Mr Tan, a seasoned gambler at many casinos, was a regular patron of SCs casino. Apparently, he was present at SCs casino on at least 28 occasions between February 1996 to March 1998.

3. SCs claim is founded on a facility, known as a "Cheque Cashing Facility" (hereinafter referred to as "CCF"), which was granted by them to Mr Tan in February 1996. A patron who has such a facility hands over a cheque to the casino in exchange for a chip purchase voucher of equivalent value. Such a voucher is then exchanged for chips, which are used by the patron to gamble at the casino. Without the CCF, Mr Tan would have not been able to gamble at SCs casino unless he had enough cash to pay for chip purchase vouchers or unless he had a cash deposit account at the casino, with enough money in it to pay for chip purchase vouchers. It is necessary to note that it is a term of the CCF that disputes relating to it or to cheques presented or cashed under the said facility are subject to the laws in force in New South Wales.

4. If a patron does not have his own cheques with him, he may request SC to provide him with counter cheques, known as "house cheques", for his signature. House cheques, which are printed in accordance with a format pre-approved by the Casino Control Authority, are recognised by many banks in Australia. The relevant information printed on house cheques, including the patrons name, bank and account number, are generated from SCs computer system, which has a record of such information.

5. In March 1998, SC provided Mr Tan and his wife with two complimentary air tickets to Sydney and a complimentary suite at their hotel for a few days. Between 26 and 28 March 1998, Mr Tan utilised the CCF at SCs casino. He signed and handed over to SC five house cheques, each for the sum of AUD 50,000, in exchange for chip purchase vouchers. In those three days, he gambled and lost AUD 250,000. When the house cheques were presented to Mr Tans bank, they were not honoured as there were insufficient funds in his account. Mr Tan has since paid SC the sum of AUD 55,160. When he refused to pay the balance of

AUD 194,840, SC instituted the present proceedings to claim that sum.

6. Apart from the cause of action founded on a loan under the CCF, SC also claimed the sum of AUD 194,840 from Mr Tan on the ground that all the five cheques issued by him were dishonoured. In addition, SC also sought to recover the said sum of AUD 194,840 from Mr Tan as money had and received.

7. Mr Tans defence is as follows:

> (a) There was no loan.
>
> (b) The five cheques signed by him and the underlying transactions are within the scope of section 5 of the Civil Law Act.
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> (c) SC are prohibited from bringing or maintaining an action against him in Singapore because of the combined effect of sub-sections (2) and (6) of section 5 of the Civil Law Act.

8. Mr Tan tried to justify the application of Singapore law to his dispute with SC on the basis of an alleged agreement with a Mr Tom Venga, SCs former representative in Singapore. No proof of the alleged agreement was furnished during the trial. There is thus no doubt that the proper law of the gaming contract and the transactions relating to Mr Tans utilisation of the CCF is the law of New South Wales.

B. THE CIVIL LAW ACT

9. SCs right to the amount claimed depends on whether or not section 5 of the Civil Law Act has any effect on what they claimed was a "loan" extended in Sydney to Mr Tan to enable him to gamble at their casino. It would thus be appropriate at this juncture to consider the relevant provisions of section 5 of the Civil Law Act.

Section 5(1) of the Civil Law Act

10. Section 5(1) of the Civil Law Act, which corresponds to the first limb of section 18 of the English Gaming Act 1845, provides as follows:

> (1) All contracts of agreements, whether by parol or in writing, by way of gaming or wagering shall be null and void.

11. Section 5(1) of the Civil Law Act, which renders all contracts of gaming or wagering void, has no extra-territorial effect. As such, this sub-section, without more, applies only to contracts governed by Singapore law.

Section 5(2) of the Civil Law Act

12. Section 5(2) of the Civil Law Act, which corresponds to the second limb of section 18 of the English Gaming Act 1845, provides as follows:

> (2) 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.

13. Section 5(2) casts a larger shadow on gambling transactions than section 5(1). It is a procedural section which bars from the courts in Singapore any action to recover, inter alia, any sum of money alleged to have been won upon a wager, regardless of whether or not the wager was concluded in Singapore or elsewhere and whether or not the wagering contract, if made abroad, was lawful at the place at which it was made.

14. When explaining the effect of the corresponding English provision, namely the second limb of section 18 of English Gaming Act 1845, Lord Radcliffe said in *Hill v William Hill (Park Lane) Ltd* [1949] AC 530, 579, as follows:

> The second part, being lex fori, might well apply to relieve our courts of the duty of adjudicating on foreign wagering contracts which by the ordinary rules of private international law would escape invalidation by the first part.

15. It is also pertinent to note that *Halsburys Laws of England* (4th ed, 1996, Conflict of Laws, para 1081*)* states the position as follows:

> In so far as the Gaming Act 1845 enacts that no suit is to be brought or maintained to recover any sum of money or valuable thing alleged to have been won upon any wager, it is a statute affecting procedure and therefore no action lies in England for money upon a wager in a foreign country, even though the wager is lawful by its proper law.

16. It follows that if SC is making a claim for money alleged to be won upon a wager, such a claim will not be allowed by section 5(2) of the Civil Law Act.

Section 5(6) of the Civil Law Act

17. As for section 5(6) of the Civil Law Act, which corresponds to section 1 of the English Gaming Act 1892, it provides as follows:

> (6) Any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement rendered null and void by subsections (1) and (2), or to pay any sum of money by way of commission, fee, reward or otherwise in respect of any such contract or of any services in relation thereto or in connection therewith, shall be null and void, and no action shall be brought or maintained to recover any such sum of money.

18. Section 5(6) of the Civil Law Act refers to contracts which are rendered null and void by sub-sections (1) and (2) of section 5. However, as has been mentioned, only section 5(1) of the Act renders a contract of gaming null and void. Section 5(2) is merely a procedural section which bars claims within its ambit.

C. CHARACTERISATION OF SCS CLAIM

19. As has been mentioned, if SC is claiming from Mr Tan money won upon a wager, the claim would be barred from our courts by section 5(2) of the Civil Law Act, which being part of the lex fori of Singapore, applies to all attempts to recover money

alleged to be won upon any wager, regardless of whether the gambling took place in Singapore or abroad. Counsel for SC, Mr Foo Maw Shen, stressed that this is not what SC is claiming from Mr Tan and that SC is merely claiming a refund of the "loan" given to him to gamble in their casino. The "loan" is based on the fact that Mr Tan gave them cheques in return for chip purchase vouchers to acquire chips to gamble at the casino. Mr Foo pointed out that in *Las Vegas Hilton Corporation t/a Las Vegas Hilton v Khoo Teng Hock Sunny* [1997] 1 SLR 341, Chao Hick Tin J, as he then was, followed the English rule that loans made abroad for the purpose of betting upon games taking place abroad, and there lawful, are recoverable. He added that this position had also been adopted in an older case, *DAlmeida v DMenzie* (1886) 5 Kyshe 126.

20. The question of applying the *Las Vegas Hilton* case will only arise if Mr Tan had been given a loan by SC. Unlike the defendant in the *Las Vegas Hilton* case, who admitted that he had taken a loan, Mr Tan denied having taken any loan from SC. His counsel, Mr Tan Kay Khai, stated as follows in pp 19-20 of his written submissions:

> The plaintiffs have labelled the transaction a loan/credit transaction. However the underlying transaction was to allow the defendant to gamble on credit and the transaction is a contract by way of gaming. The cheques were not given for cash and indeed, no money changed hands.
>
> In the present case, a debt was incurred because the defendant was a losing player and the plaintiffs are claiming the recovery of his gambling losses. In other words, the plaintiffs claim owe[s] its origin to the fact that gaming bets were made by the defendant and the sum of AUD 194,840 represents the unpaid monies so won by the plaintiffs.
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> Section 5 of the CLA prohibits an action based on any promise (express or implied) to pay a sum won on the wager. Accordingly, despite previous payments by the defendant, an obligation of honour cannot be transformed into a legal liability (as a loan or as money due on the cheques) because such transformation seeks to turn money which was in the first place won on a wager into something else.

21. How SCs claim against Mr Tan is characterised is thus of utmost importance. The real question in this case may thus be framed as follows: Considering the arrangement between SC and Mr Tan regarding the CCF facility offered to him, and the events which occurred, is SC seeking to recover a loan or money alleged to be won upon a wager? To answer this question, it is necessary to consider whether or not SCs act of exchanging Mr Tans five house cheques of AUD 50,000 each for chip purchase vouchers resulted in the creation of a genuine loan to him.

22. A very sensible approach on the effect of an exchange of a cheque for chips was adopted in a Scottish case, *Cumming v Mackie* (1973) SLT 242. Although that case is fraught with difficulty and concerned a number of statutory provisions which are not relevant to the issue in the present case, the following passage from Lord Frasers judgment at p 244 merits attention:

> Where a member of an ordinary social club, which is not connected with gambling, carries out a transaction which he would ordinarily describe as "cashing a cheque at his club", I do not think that there is any question of the club making a loan or advance to the member. I should have thought that the member, by handing over his cheque, puts the club in funds to the amount of the cheque, and the club in return undertakes to meet the members gambling losses to the face value of chips. *The member pays in advance, and he never has to repay any loan.*
>
> (emphasis added)

23. There is no reason why the position should, in the absence of any statutory provision governing the position, be altered in the case of an exchange of cheques for chips or chip purchase vouchers in a casino.

24. The English position on whether or not there is an underlying loan when a cheque is exchanged for gambling chips is different. In *Crockfords Club Ltd v Mehta* [1992] 1 WLR 355, 368, Stuart-Smith LJ summed up the English position when he said that the old cases relating to gaming proceed on the basis that where there is an exchange of cash or tokens for a cheque, there is an underlying loan. This is not to say that English law on the recovery of loans made for the purpose of gambling is uncomplicated. Indeed, in *CHT Ltd v Ward* [1965] 2 QB 63, 86, Davies LJ conceded, while referring to loans made for gambling in England and abroad, that the position may have to be reviewed when he said as follows:

> The question whether these authorities correctly interpret and apply the statutes with regard to either sort of loan may be a matter for consideration elsewhere. Whether in any event it is in the public interest that either sort of loan should be recoverable might be a matter for consideration by Parliament.

25. For the purpose of determining whether SCs claim should be characterised as a claim for a sum of money won upon a wager or as a loan, the history of the English Gaming Acts and the approach of the English courts to contracts of gaming ought to be examined. The history of the English Gaming Acts was discussed in great detail by Selvam J in *Star Cruise Services Ltd v Overseas Union Bank Ltd* [1999] 2 SLR 412. What needs to be reiterated here is that not all the English Gaming Acts have corresponding provisions in Singapore. As such, some of the English decisions discussed below concern statutory provisions which are not altogether relevant to the position in Singapore. All the same, they are discussed for the sole purpose of illustrating the unwillingness of English courts to accommodate attempts to evade the provisions of the English Gaming Acts.

26. English legislation on gaming contracts was intended to check gambling on credit. As a result, judges have more often than not forcefully thwarted manoeuvres to outflank the Gaming Acts by disguising claims for gambling debts as other types of claims.

27. To begin with, in *Hill v William Hill (Park Lane) Ltd* [1949] AC 530, the House of Lords made it clear that creditors could not avoid the Gaming Acts by entering into fresh agreements with debtors for the payment of gambling debts. Often enough, such fresh agreements had been entered into after the creditors threatened to report the debtors to their banks or others in authority. Viscount Simon said at p 548 as follows:

> One cannot read the Gaming Act 1845 without perceiving that it was a very serious attempt on the part of the legislature to put down wagering, and I decline to think that *such an obvious and fatal blot was permitted to exist in it, which would well-nigh neutralize its practical effect*, when I find language used which is perfectly apt to meet the case and which to my mind can fairly bear no other interpretation than that which would thus render it effective.
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> (emphasis added)

28. Attempts to get around the Gaming Acts by instituting an action for accounts also failed in a number of cases. In *Law v Dearnley* [1950] 1 KB 400, the Court of Appeal emphasized, when striking out an action for accounts stated in respect of betting transactions, that it is the reality of the transaction which must be looked at and not the way in which it was presented to the court.

Singleton LJ said as follows at p 417:

> There is no getting away from the fact that the plaintiff sued the defendant in respect of bets on horses and really on nothing else, whatever he may choose to call the action. *The fact remains that the courts of this country are not meant for use for the recovery of gambling debts*. Everyone has recognised that for a long time. *That is why other names or labels are put upon them when they are brought into court*.
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> (emphasis added)

29. More relevant to the present case are the cases where the English courts rejected claims on gaming contracts which were disguised as claims for the recovery of loans. In *Woolf v Freeman* [1937] 1 All ER 178, the plaintiff was the proprietor of a club, at which card games were played with chips and counters. The defendant purchased 30 worth of chips from the club and paid for them with a third partys cheque. The cheque was subsequently dishonoured. There was a practice in the club that if a loser had insufficient chips to pay for his losses, both the winner and the loser would proceed to the club office, where the office paid the winner on behalf of the loser. After the office had paid the defendants losses on his behalf, the plaintiff sued the defendant for 30, the price of the counters, or alternatively, for the same sum as money lent. The claim was dismissed by Macnaghten J, who said as follows at p 181:

> Here is a man carrying on a club for the purpose of gaming or wagering at cards, and if the proprietor of such a club chooses to sell his chips on credit, or *for a security that proves to be of no avail*, then it seems to me that he cannot have resort to a court of law to enforce the obligation of that member. Therefore the sum of 30 for chips cannot be recovered by reason of the Gaming Acts.
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> (emphasis added)

30. MacNaghten Js judgment was applied by the Court of Appeal in *CHT Ltd v Ward* [1965] 2 QB 63, where another attempt to recover what the plaintiff contended was a loan was dismissed. In this case, the plaintiffs were the proprietors of a club and the defendant was a member of that club. Poker, as played in the club was lawful gaming within section 16 of the English Betting and Gaming Act 1960. It was played by means of chips, which were obtained from the plaintiffs, who debited the members accounts with the total value of chips obtained by them. Weekly statements of account were sent out to members. By 22 June 1961, the defendants account showed that her gaming losses amounted to 196 14s 2d. The plaintiffs sued the defendant to recover that sum as money loaned to her for the purpose of enabling her to engage in gaming at the club. Their claim was dismissed by Lawton J, whose decision was affirmed by the Court of Appeal. Davies LJ, who delivered the judgment of the Court, said that in all essentials, *Woolf v Freeman* was indistinguishable from the case before the court. Noting that the main contention of the plaintiffs, put in various ways, was that the issue of the chips to the defendant was equivalent to a loan of money, he said at p 79 as follows:

> It is impossible to accept this analysis of the situation. People do not game in order to win chips; they game in order to win money. The chips are not money or moneys worth; they are mere counters or symbols used for the convenience of all concerned in the gaming.

31. In *MacDonald v Green* [1951] 1 KB 594, the English Court of Appeal also had occasion to express its disapproval of an attempt to disguise a gambling transaction as a loan made to a gambler

after he had already incurred losses at the gambling table. Although that case concerned an alleged loan given after the gambling losses had already piled up, it is still worth noting. In that case, the plaintiff was the managing director of a company which carried on business as bookmakers and commission agents. In June 1949, the defendant owed the company 4,020 for losses on betting transactions. The plaintiff agreed to lend the defendant money to pay his debt. A company servant delivered a cheque for 4,020 to the defendant, together with a note, which the defendant signed. The note acknowledged the receipt of the cheque and stated that the defendant would repay the loan by weekly instalments of 80. The defendant endorsed the cheque and handed both documents to the companys servant. The defendant defaulted when the balance of the loan was 1,860 and the plaintiff sued to recover this sum. The defendant contended that the contract concerned the payment of money by the plaintiff to the creditor company in respect of betting losses and not a loan. The plaintiffs claim was upheld by Slade J. However, the Court of Appeal took a different view. Denning LJ, as he then was, stressed that the courts must look at the substance where a transaction is disguised as a loan. He explained that bookmakers would be presented with a means of evading the Gaming Acts if Slade Js decision was upheld and added as follows at p 605:

> The transaction seems to me to fall precisely within the words of s 1 of the Gaming Act, 1892. The money for which MacDonald sues is money which his bank paid to the bookmaking company in respect of the betting debts which Green had incurred. I do not think it matters whether in point of law, MacDonalds claim against Green was for money lent or for money paid at Greens request. *Even if it were disguised in the form of a loan, the substance of it* was that MacDonald paid Greens losses and seeks to recover the amount from Green. That he cannot do.
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> (emphasis added)

32. The decision of the House of Lords in *Lipkin Gorman v Karpnale Ltd* [1991] 2 AC 548 also sheds some light on how SCs claim should be viewed. In that case, one Cass, a partner in the plaintiff firm of solicitors and a compulsive gambler, took money from the firms client account and exchanged it for chips, which were used by him to gamble at the defendant club. One of the issues which arose was whether or not there was a separate contract for the purchase of the chips. Lord Templeman, with whom Lord Ackner, Lord Bridge and Lord Griffiths agreed, said at p 562 as follows:

> Another way of analysing the position is this. When Cass entered the club as a member, the club made to him a revocable offer to gamble with him in the manner and upon the terms dictated by the club. Those terms required Cass to pay his gambling stakes in advance and to allow the club to pay their gambling losses in arrears. The revocable offer by the club was accepted by Cass when he staked a chip and became irrevocable when the croupier accepted the chip as a stake. *There was only one contract and that was a gaming contract*.
>
> (emphasis added)

33. Lord Templemans view that there was only one contract, namely a gaming contract, merits attention. I do not see why the payment of Mr Tans gambling stakes in advance by a cheque alters the fact that there was only one contract and that was a gaming contract. That the transactions involving the handing over by Mr Tan of the house cheques in exchange for chip purchase vouchers are an integral part of the entire gaming transaction cannot be conveniently ignored. As such, although the *Lipkin Gorman* case involved a different issue, namely the right of a person whose funds have been stolen and used for gambling purposes at a club or casino to recover the amount lost by

the gambler, the passage from Lord Templemans judgment cited above may nonetheless be conveniently modified for the purpose of the present case to read as follows:

> By allowing Mr Tan to open a CCF at the casino, the casino made to him a revocable offer to gamble with him in the manner and upon the terms dictated by the club. Those terms permitted Mr Tan to pay his gambling stakes in advance *by cheque* and to allow the club to pay their gambling losses in arrears. The revocable offer by the club was accepted by Mr Tan when he staked a chip and became irrevocable when the croupier accepted the chip as a stake. *There was only one contract and that was a gaming contract*.
>
> (emphasis added)

34. The approach of the courts towards gaming should not differ merely because a cheque was exchanged for chips or chip purchase vouchers. In the light of the discussion above, I do not accept that a claim cannot be viewed as an attempt to recover money won upon a wager merely because a cheque was exchanged for gambling chips, which, in the main, could only be used for gambling in a casino. To hold otherwise would be to mock the attempt by the legislature to curb gambling on credit. If a teacher, who took 100 students to an amusement park where tokens are required for rides and other forms of entertainment, gave the amusement park a cheque of $1,000 for the tokens, no one expects the amusement park to sue for the recovery of a "loan" if the cheque is dishonoured. Why should there be a difference merely because tokens or chips are supplied by a casino in return for a cheque?

35. Whether there is a genuine loan must depend on the circumstances in each case. If the facts in this case are examined closely, it is evident that Mr Tan gambled and lost the sum which SC is seeking to recover from him. I thus hold that whether SCs claim is framed as a recovery of a loan, a claim on dishonoured cheques or one for money had and received, the action may be characterised as one for money won upon a wager even though Mr Tan issued five house cheques for the chip exchange vouchers.

D. CONCLUSION

36. In the final analysis, the issue in this case is whether or not the courts in Singapore should be concerned with what is, in truth, a claim by SC for money won upon a wager. Section 9A of the Interpretation Act (Chapter 1) provides that in the interpretation of a written law, a purposive interpretation that would promote the purpose or object underlying the written law shall be preferred to an interpretation that would not promote that purpose or object. There can be no doubt that a purposive interpretation should be given to section 5(2) of the Civil Law Act to relieve our courts from having to deal with such a claim. In the face of a claim which is essentially one for money won at a gambling table, one ought to be mindful of Rabels remark that "games of chance, indeed, are not worthy of serious judicial consideration". (See *Conflict of Laws: A Comparative Study*, 2nd ed, 1958, 572.) It should also be borne in mind that almost two centuries ago, in *Gilbert v Sykes* (1812) 16 East 150, 162, Bayley J referred to the feeling of judges that "it would be a good rule to postpone the trial of every action upon idle wagers till the Court had nothing else to do." More recently, in his article on *Loans for Extraterritorial Gambling and the Proper Law* [1998] SJLS 421, 428-429, Associate Professor Yeo Tiong Min rightly observed that "in the modern context, the legal policy behind [section 5] of the Civil Law Act is arguably not only the discouragement of behaviour which is, though not considered fundamentally immoral, at least undesirable, but also the prevention of such disputes from

occupying the time and resources of the court, which are better spent on other more deserving matters".

37. For the reasons already stated, SCs claim is dismissed with costs.

Tan Lee Meng

Judge