Desert Palace Inc (doing business as Caesars Palace) v Poh Soon Kiat [2008] SGHC 144

Case Number : Suit 670/2007, RA 77/2008, 78/2008

Decision Date : 02 September 2008

Tribunal/Court : High Court

Coram : Chan Seng Onn J

Counsel Name(s) : Foo Maw Shen and Daryl Ong and Ng Hui Min (Rodyk & Davidson LLP) for the plaintiff; Chou Sean Yu and Tan Yee Siong (WongPartnership LLP) for the defendant

Parties : Desert Palace Inc (doing business as Caesars Palace) — Poh Soon Kiat

Betting, Gaming and Lotteries – Wagering contracts – Debtor borrowing moneys in Las Vegas to gamble – Creditor obtaining foreign judgments to recover debt – Creditor commencing present action to enforce foreign judgments – Whether foreign wagering contract valid under foreign law unenforceable – Whether present action brought to enforce foreign judgments obtained pursuant to wagering contract prohibited – Sections 5(1) and 5(2) Civil Law Act (Cap 43, 1999 Rev Ed)

Limitation of Actions – Particular causes of action – Enforcement of foreign judgments – Creditor obtaining several foreign judgments to recover same debt – Test to determine which judgment being enforced in present action – Whether time bar for enforcement of foreign judgments six years or 12 years – Sections 6(1)(a) and 6(3) Limitation Act (Cap 163, 1996 Rev Ed)

2 September 2008

Chan Seng Onn J :

Introduction

1 This was an appeal against the decision of the Assistant Registrar, Mr Teo Guan Siew ("AR"), dismissing the plaintiff's application for summary judgment and allowing the defendant's application to strike out the plaintiff's statement of claim. I allowed the appeal, set aside the decision of the AR and granted summary judgment. The defendant appealed and I now give my reasons.

Background

2 The plaintiff carried on business as a hotel and casino in Las Vegas, trading under the name of Caesars Palace. The plaintiff's claim was filed on 19 October 2007 and was for a sum of US$4,378,927.63, being the balance of the sum due to the plaintiff under a judgment of the Superior Court of the State of California for the County of Santa Clara including post-judgment interest and legal costs.

3 The defendant patronised Caesars Palace on various occasions between 1992 and 1998 and he incurred what he alleged were gambling debts. The plaintiff said that the defendant was lent US$2,000,000 and had signed 10 markers or cheques in exchange for gambling chips to enable him to play at the gambling tables. The plaintiff therefore extended credit for gambling to the defendant. The markers or cheques were evidence of his obligation to repay those monies to the plaintiff. If the defendant lost at the gambling tables but paid for the losses, the markers or cheques would be returned to him for destruction. The defendant never paid cash to purchase the gambling chips for gambling. If the defendant had paid cash to purchase the gambling chips, then there would have been no extension of credit by the plaintiff to the defendant to gamble, and in which event, he could return

the chips (and any extra chips won at the gambling tables) in exchange for cash. This was an important difference.

4 The plaintiff commenced proceedings in the District Court for Clark County, Nevada, United States of America ("USA") in Case No. A 390420 to recover the monies lent and obtained default judgment for US$2,000,000 on **29 March 1999 (the "Nevada Judgment")**.

5 Subsequently, in proceedings in a sister state in the USA to enforce the Nevada Judgment, the plaintiff also obtained judgment (another default judgment) in Case No. CV 782287 on **2 June 1999** in the Superior Court of the State of California for the County of Santa Clara in the total sum of US$2,453,126.33 (**the "First Judgment"**).

6 The plaintiff and a co-plaintiff, Sheraton Desert Inn Corporation ("Sheraton") jointly issued fresh proceedings in the Superior Court of the State of California for the County of Santa Clara in Case No. CV 789130 to set aside the transfer of property by the defendant to a BVI corporation, Surepath Development Limited ("Surepath"), the second defendant. On 11 February 1999, the defendant had executed a deed for the transfer of a one third interest in certain real property in California (the "property") to Surepath. This transfer was sought to be set aside as being a fraudulent conveyance aimed at frustrating satisfaction of the Nevada Judgment, and a constructive trust was sought to be imposed on Surepath.

7 Judgment was given on **9 November 2001** in default in the plaintiff's favour (**the "Second Judgment"**) whereby the transfer was set aside and the property was to be sold in part or full satisfaction pro rata of Sheraton's judgment and Caesars' First Judgment, with the defendant being liable for any deficiency on the satisfaction of those judgments. The material part of the Second Judgment that concerned this present action was the following:

> The proceeds of sale shall be applied pro-rata toward the Judgments referenced in the previous paragraph [i.e. Sheraton's judgment and Caesars' First Judgment] and if there are not sufficient proceeds from the sale to satisfy the Judgments in full, then Defendant SOON KIAT POH shall remain liable for any such deficiency on the Judgments.

8 Following the sale of the property, a total of US$130,119.35 was credited to the plaintiff as against the First Judgment amount and the interest on that sum. The "deficiency" under the Second Judgment stood at US$4,343,306.91. In the present proceedings, the plaintiff sought to enforce the Second Judgment against the defendant for this deficiency remaining unpaid.

9 The defendant raised the following defences in the present proceedings:

(a) The claim for payment of gaming debts incurred under a contract or agreement by way of gaming or wagering was null and void under section 5(1) of the Civil Law Act ("CLA").

(b) The claim for recovery of a gambling debt which in essence was money won upon a wager was prohibited and unenforceable under section 5(2) of the CLA.

(c) The claim was barred under section 6(1)(a) of the Limitation Act ("LA") since more than 6 years had passed since the debt accrued. The plaintiff had characterised its claim as essentially an enforcement of the Second Judgment in order to avoid the operative time bar.

10 For convenience, I now set out both section 5 of the CLA and section 6 of the LA.

11 Section 5 of CLA provides as follows:

Agreement by way of gaming or wagering to be null and void

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

(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.

.....

12 Section 6 of the LA provides that:

Limitation of actions of contract and tort and certain other actions.

6. —(1) Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:

(a) actions founded on a contract or on tort;

(b) actions to enforce a recognizance;

(c) actions to enforce an award;

(d) actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or sum by way of penalty or forfeiture.

(2)…..

(3) An action upon any judgment shall not be brought after the expiration of 12 years from the date on which the judgment became enforceable and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of 6 years from the date on which the interest became due.

Decision of the AR

13 The AR ruled in favour of the defendant on the ground that the plaintiff's claim was barred by section 6(1)(a) of the LA, under which no action founded on a contract was to be brought 6 years from the date of accrual of the cause of action. Similarly, an action founded upon an implied contract based on a foreign judgment would be time barred (under section 6(1)(a) of the LA) after 6 years from the date of the foreign judgment. As this was sufficient to dispose of the matter, the AR did not consider the other issues in the claim.

14 The AR stated that a common law action to enforce a foreign judgment would proceed as an action to sue for the judgment debt on the basis of an implied contract by the judgment debtor to pay the judgment debt. See *Westacre Investments Inc v Yugoimport –SDPR (also known as Jugoimport-SDPR)* [2007] 1 SLR 501. The accrual of the cause of action would generally be the date when the judgment debt (sued upon) came into being.

15 The AR further determined that Singapore Law, as the *lex fori*, applied to determine what was the judgment debt and when it accrued for the purpose of section 3 (1) of the LA. In the AR's view, the Second Judgment clearly sought to enforce the judgment debt created by the First Judgment, or in fact the Nevada Judgment before that, and that judgment debt accrued way back in 1999. The AR ruled that notwithstanding that the plaintiff's claim was clothed in terms of the Second Judgment, in substance it was the judgment debt of 1999 that was sought to be enforced. As such, the action to enforce that judgment debt by way of an implied contract was time barred under section 6(1)(a) of the LA. The AR disregarded the evidence on foreign law.

16 Basically, the AR accepted the defence that more than six years had elapsed since the principal debt accrued in Caesars Palace in Nevada, USA at the end of 1998. In effect, the defendant's position was that the plaintiff was suing on the original debt he had incurred. The AR accordingly found that the action was time barred in Singapore.

My analysis

17 My analysis would be structured as follows:

> **First question** would be whether or not enforcement of the foreign judgment (be it the Nevada, First or Second Judgment) by way of a common law action was contrary to s 5(2) of the CLA. If it was unenforceable, then the plaintiff's claim must be dismissed and that would be the end of the matter. But if it was enforceable, then the second question below must be answered.
>
> **Second question** was whether the time bar for a common law action in Singapore on a foreign judgment (be it the Nevada, First or Second Judgment) was 12 years (pursuant to s 6 (3) of the LA) or 6 years (pursuant to s 6 (1) (a) of the LA) from the date of accrual of the cause of action which would be the date of issuance of the respective foreign judgments. This was a difficult question in the light of the conflicting authorities cited to me. I would pause to deal briefly with the significance of this question in relation to the facts of this case.

18 This present action was filed just 3 weeks before the date of 6 years from the Second Judgment. Hence, any common law action to sue in Singapore on the Second Judgment as an implied contract by the judgment debtor to pay the judgment debt would be within the limitation period of 6 years **if** the applicable provision was s 6(1)(a) of the LA. It would also be within the limitation period of 12 years **if** s 6(3) of the LA were to be construed to be applicable not only to an action upon a domestic judgment but also to an action in Singapore upon a foreign judgment. Essentially, no time bar applied in any event in relation to an action founded upon the Second Judgment.

19 However, if the court were to consider the present action of the plaintiff to be in substance an action taken to enforce the earlier Nevada Judgment or the First Judgment, both of which were rendered more than 6 years but less than 12 years from the date this present action was filed, then the present action would be time barred if the applicable provision was s 6(1)(a), but not time barred if the applicable provision was s 6(3).

20 Hence, if I should determine that the applicable provision for the time bar was s 6(3) and the time bar was therefore 12 years, there would be no need to proceed to the third question below. The plaintiff's claim would have to be allowed and there would be no necessity to discuss which judgment the plaintiff was enforcing in substance by way of an action upon a foreign judgment because the time bar even for the earliest of the three foreign judgments (i.e. the Nevada Judgment) would only set in after the year 2011. The third question would then be of academic interest only.

21 However, if the applicable time bar provision was indeed s 6(1)(a) and not s 6(3), the time bar would then be much shorter at 6 years. The third question below would no longer be moot but would have to be carefully examined and answered before any final outcome of the plaintiff's claim could be determined.

> **Third question**: was the present suit essentially an action upon the Second Judgment or was it to be considered essentially as an action upon the Nevada Judgment because the gambling debt had originated in Nevada, and the First and Second Judgment stemmed from the Nevada Judgment? If the time bar for a fresh action upon a foreign judgment was indeed 6 years as prescribed under s 6(1)(a) of the LA and the present action was effectively an action upon the Nevada Judgment (or even the First Judgment), the plaintiff's action must be dismissed as the action would be time barred. But if it was to be construed as an action upon the Second Judgment, then the plaintiff's claim must still be allowed. To answer the third question, the court would also have to consider whether the common law action upon the Second Judgment (a judgment of the Californian Court) stood alone as a fresh cause of action, which was independent of both the Nevada Judgment and the First Judgment. A subsidiary question would be whether the court should decide this latter issue based on Singapore Law or Californian Law.

First question: whether S 5(2) of the CLA precluded an action upon a foreign judgment on a gambling debt?

22 The plaintiff characterised the contract between itself and the defendant as one for a loan or for sums advanced to the defendant. The defendant said that in reality, it was a gaming or wagering contract because the sole purpose the defendant was extended or advanced such sums was to allow him to gamble at Caesars Palace. The markers or cheques on which the plaintiff made its claim were not cheques in the ordinary sense but constituted evidence of the gambling debt incurred when the defendant lost at the gaming tables. The defendant thus submitted that it was a contract by way of gaming and wagering.

23 The defendant strenuously argued that section 5(2) of the CLA applied to preclude the claim of the plaintiff because the claim was based on a gambling debt. In support, the defendant relied on the passages in the judgment delivered by Yong CJ in *Star Cruise Services Ltd v Overseas Union Bank Ltd* [1999] 3 SLR 412:

> 3 ... Alan Teo and Siak were registered with SIS as VIP customers. To induce Alan Teo to gamble he was given a credit-line. It was an arrangement of 'lose first and pay later'. … The plaintiffs gave a credit-line to SIS with a limit of $2m and SIS extended a subsidiary credit-line to Alan Teo. Alan Teo's limit in 1995 was $20,000. It increased gradually and in 1997 it was $600,000. In practice, however, this limit was not observed. In February 1997 his gambling debt due to SIS was $700,000. In June 1997 it was $970,435. In December 1997 it was $432,590.
>
> 4 The losses payable by Alan Teo were referred to as loans. Names were but convenient labels. The word 'loan' was a euphemistic description of gambling losses under a 'play-now-pay-later' scheme. If there was no loss there was no debt nor loan. When there was a loss a gambling debt would appear and in 'casino-speak' it would be called a loan.

24 It was held at [53]:

> 53 The *Ward*, *Green* and *Freeman* cases are clear authorities for the proposition that where a casino or its proxy does not actually hand over money or effectively pays the losses on behalf of the loser, the losses are not recoverable as loans.

25 And at [68] - [69]:

> 68 First the purpose of s 6 is not to prohibit games and wagering or make them illegal. … all gaming and wagering are lawful. At the same time they are not valid. They are all void. Section 6 recognises the social and entertainment value of gaming and betting and does not seek to suppress them … All gaming and wagering debts are debts of honour. The law does not interfere with or proscribe honour among the players. There is no prohibition against payment of the loss provided the debt is met with honest money. However, what the law does object is their coming to the courts to settle their disputes and it manifests its objection by making all contracts and agreements by way of gaming void. In the result they are devoid of all legal effect. Gaming debts are not legal debts. The courts of justice are out of bounds to claims based on gaming or wagering because no action can be brought or maintained to enforce them. The doors of justice are closed to them. Sections 6(2) and (5) have clamped down on credit gambling by denying legal remedy to enforce gaming debts and securities based on them. It has done so for public policy reasons with a history of some 450 years.
>
> 69 Next, the phrase 'by way of' is an idiomatic expression indicating, the channel or medium through which money is intended to flow from the pocket of one gambler to that of another. It includes the accessory contracts before the actual game and derivative contracts after the play. In the case of a composite-contract, if the gaming contract is the central or matrix contract, the whole composite-contract comprising the central, accessory and derivative contracts are voided and affected by s 6. The composite-contract would form a single gaming contract. See *Lipkin Gorman v Karpnale* [1991] 2 AC 548 (HL)**.** Accordingly, when faced with a gaming transaction, having regard to s 9A of the Interpretation Act, one must take the scene in its totality and determine what the true nature of the contract is and give effect to s 6 to promote its purpose and object.

26 Finally, at [125] - [126], it was held:

> 125 … As I have demonstrated, the chips contracts and issue of cheques were necessary accessories to the actual gaming and are part and parcel of gaming in casinos. In casino parlance a gaming debt was gratuitously named as a loan.
>
> 126 First, the alleged loan was a fiction. On the evidence before me no money ever passed from the plaintiffs to the defendants or Alan Teo. The loan was another label for gaming debt. The true nature of what took place was that Alan Teo was allowed to gamble on credit. He had a credit line and did not have to pay the gambling losses immediately. Sometimes the debt was acknowledged by the issue of cheques and later substituted them for cashier`s orders. This does not alter the true nature of the transaction. The cheques themselves were worthless. A wolf in lamb`s clothing at all times remains a wolf.

27 In *Quek Chiau Beng v Phua Swee Pah Jimmy* [2001] 1 SLR 762, where a junket operator sued a gambler for monies which arose from losses at the Crown Casino, Selvam J held at [8]:

> A loss cannot be disguised as a loan or sales contract to circumvent the gaming section.

28 The defendant contended that the following were features of the modus operandi in *Star Cruise* which also appeared in Caesars Palace:

> 1) the gamblers were given an increasing credit line to gamble - an arrangement of 'lose first, pay later';

2) the losses were referred to as loans but the casino did not actually hand over money or effectively pay the losses on behalf of the loser;

3) the gaming contract was the central contract - the chips and the issue of cheques were necessary accessories to the actual gaming, and were part and parcel of gaming in the casino.

29 The defendant therefore submitted that despite the plaintiff's attempt to characterise the debt as that for a loan, the truth of the matter was that it was a gaming contract. The court was obliged to look into the essence of foreign transactions and to re-characterise a transaction according to the law of Singapore.

30 The defendant next referred me to *Star City Pty Ltd (fka Sydney Harbour Casino Pty Ltd) v Tan Hong Woon* [2002] 2 SLR 22 ("*Star City*"), where the Court of Appeal rejected the claim of a casino for recovery of sums loaned to a gambler. The background facts were set out at [2] - [3] of the judgment of Yong CJ:

2 … A patron who has been granted a credit facility hands over a cheque to the casino in exchange for a chip purchase voucher ('CPV') of an equivalent value. The CPV will then be exchanged for chips for gaming at the tables. If the patron does not have his personal cheques with him, he may request to make use of counter cheques, known as 'house cheques'. A house cheque is simply a document printed on a format which has been pre-approved … The patron can redeem his cheque by exchanging it with cash, bank drafts, CPV, chips or via the electronic transfer of funds of an equivalent value. If the cheque is not redeemed within the applicable time period, Star City will then present the cheque for payment. Without the CCF (cheque cashing facility), the patron will not be able to gamble at the casino unless he has enough cash in hand to pay for the gambling chips or has sufficient funds in his cash deposit account.

3 The respondent, Mr Tan, is a seasoned gambler and a regular patron of Star City Casino. Between February 1996 to March 1998, he visited and gambled at the casino on at least 28 occasions and was treated by the casino as a 'valued patron'. Mr Tan was also granted the use of the casino's CCF in February 1996. In March 1998, Star City provided Mr Tan and his wife with two complimentary air tickets to Sydney as well as a complimentary suite at their hotel for a few days. Between 26 and 28 March 1998, Mr Tan signed and handed over to Star City five house cheques, each for the sum of AU$50,000, in exchange for CPVs and promptly proceeded to lose the entire sum of AU$250,000. When these house cheques were presented to Mr Tan's bank for payment, all five were dishonoured for lack of sufficient funds in his bank account. Subsequently Mr Tan made good to the casino AU$55,160, leaving the sum of AU$194,840 unpaid. The appellant is now seeking to recover this sum as unpaid loans made to the respondent to enable him to gamble at their casino.

31 At [28] - [29], Yong CJ held:

28 To begin with, it is clear that the enforcement of a right or a cause of action is a matter for the forum. The lex fori does not interfere in the validity of the transaction but as the place where the action is being brought, it has the right to determine the situations when foreign causes of action can be enforced. It is an established principle of private international law that the courts of the forum will not enforce a foreign cause of action that is contrary to local public policy.

29 We are of the view that in order to determine whether the enforcement of a foreign cause of action would be contrary to forum policy, the court must necessarily apply its mind and the lex

fori to determine its true substance. Otherwise, the forum would no longer be master of its own home and local public policy concerns easily circumvented by 'forum-shopping'. There is another way to support this conclusion. We have earlier concluded that s 5(2) is a procedural provision which applies whenever foreign causes of action are being enforced in Singapore. The clear and peremptory words of s 5 of the CLA make clear that it is intended by the legislature to be a forum mandatory provision which parties cannot avoid by contracting out of. Our courts must hence pay attention to the essence of foreign transactions and must forcefully resist all attempts to evade the provisions of the CLA. We are further supported in our conclusion by s 9A of the Interpretation Act (Cap 1, 1999 Ed) which requires the court, in the interpretation of a statutory provision, to prefer a purposive interpretation which would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) to an interpretation that would not promote that purpose or object. Putting the two principles together, it follows that the courts of the forum are entitled to re-characterise a transaction according to the law and logic of the lex fori. Unlike what Star City contends, we consider that the trial judge was, in principle, fully justified to look into the reality of the transaction so as to determine whether s 5(2) of the CLA applied. The fact that a sum of money won on a wagering contract is valid and enforceable under the laws of New South Wales should not prevent the Singapore courts from declining to aid in its enforcement, if to do so would be contrary to the public policy of Singapore.

32 At [31], Yong CJ declared clearly the applicable public policy:

> 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 CLA, 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 v Overseas Union Bank* (supra). It is in this sense that the earlier decision in *Las Vegas Hilton Corp v Khoo Teng Hock Sunny* (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.

33 Yong CJ then found at [35] - [37] that the "cheque" facility offered by the casino were not genuine loans:

> 35 We now turn to consider the nature of the transaction. Several features of the cheque-cashing facility that had been offered by Star City to Mr Tan should be noted:
>
> (1) The chips are worthless outside the casino and are mere counters.
>
> (2) No moneys were ever actually advanced by the casino. Star City only gave the gambler the right to play at the tables upon presentation of the house cheques.
>
> (3) Any moneys that were lost were made good by the gambler and not Star City.

> 36 Chips are regarded as cash in Star City casino and have to be used to gamble at the tables. Therefore a gambler patron has to exchange cash or money's worth for the chips. We are of the view that the chips placed on the gaming tables represent the moneys paid in advance by the gamblers to the casino by the cheques, although the actual transfer of funds will come later. Therefore the chips lost at the tables represented the gambling losses of the patron. He will have to make good his gambling losses to the casino and not to anyone else. Although cheques are to remain uncashed and can be redeemed upon 're-payment' by gamblers within a period of ten days, this is only a deferred form of payment to give gamblers time to ensure that they have sufficient funds to repay their gambling losses in their bank accounts. The CCF facility provided by Star City to their patrons cannot be genuine loans because the facility merely enables them to gamble on credit and not for any other purpose.
>
> 37 The converse conclusion will mean having to classify the exchange of the cheque for the chips as a sale; for which the casino is giving loan credit on the security of the cheque pending redemption and the gambling at the tables as a transaction that is independent and unconnected to the first. This is against logic and principle: what would a gambler want with the chips except to use them for gambling and gambling alone? A broad view of things must be taken, and this points towards the cheques being used to pay for the gaming chips and any money to be recovered by the casinos as money won/lost upon a wager rather than a true loan: *Lipkin Gorman v Karpnale* [1991] 2 AC 548; [1992] 4 All ER 512. The exchange of a cheque for a CPV and chips is an essential part of the composite gambling contract. It is the means by which gambling is to take place rather than a true security for credit; a 'play now and pay later' scheme. For the above reasons, we agree with the trial judge that the sum of AU$194,840 was money that Star City had won from Mr Tan on a wagering contract rather than a genuine loan.

34 Yong CJ affirmed that it was for the forum to decide on the characterisation of the transaction. He held at [38]:

> 38 ... The fact that the gambler has stated that he believes that he owes the casino moneys lent to him for the purposes of gambling cannot convert what is essentially money lost in wagers into something else. The overriding test must be the essence of the transaction itself as determined by the courts of the forum.

35 Finally, at [39], Yong CJ held:

> 39 … s 5(2) of the CLA is a procedural section which was legislated to relieve our courts from the burden of adjudicating upon both local and foreign gambling contracts. Star City's claim against Mr Tan being in essence an action to recover money lost upon a wager falls within s 5(2) and is unenforceable in Singapore. Neither can Star City claim upon the dishonoured cheques as the recovery on the underlying gambling contract is contrary to public policy.

36 In extensive reliance on the above authorities, the defendant accordingly submitted that despite the imposition of a foreign judgment (whether the Nevada Judgment, the First Judgment or the Second Judgment), the court was entitled to look into the underlying transaction which founded the said judgment. The foreign judgment merely created an implied contract which the plaintiff was now suing upon in this court.

37 The defendant further submitted that were the court to look into the essence of the transaction between the plaintiff and the defendant, the irresistible conclusion must be that the plaintiff sued upon a gaming or wagering contract concluded in Nevada, USA and the monies it was now seeking to recover here in Singapore were in fact monies won upon a wager. The court should

not allow the plaintiff to circumvent section 5(2) of the CLA merely because it had obtained a foreign judgment.

The application of section 5 of the CLA

38 In my view, if the plaintiff had sued in Singapore in reliance on the facts as set out above in [3], the plaintiff would clearly have an uphill task in persuading the court to find in its favour that it was in reality not an action brought for recovering monies won upon a wager. It did not matter that the transaction took place in a foreign jurisdiction in which action for the recovery of such monies (though prohibited in Singapore) would have been nevertheless legally enforceable in that foreign jurisdiction. If the action before me was simply to enforce the debt premised on the facts in [3], I would have immediately dismissed it as the Court of Appeal decisions cited by the defendant were binding on me and the material facts in the present case were indistinguishable from the facts in those cases.

39 Section 5(1) applied only to gaming and wagering contracts made in Singapore (and perhaps also in my view to contracts governed by Singapore law) and in this respect was therefore not relevant to the present case: see *Star City* at [4]. However, claims brought on contracts, whether made outside or within Singapore, to recover monies won upon any wager would fall within s 5(2) and would be procedurally rendered unenforceable in Singapore (regardless whether it was lawful at the place where it was made) as was decided in *Star City*.

40 But counsel for the defendant had not been able to cite a Court of Appeal decision binding on me that had interpreted section 5 (2) to bar procedurally **a claim or an action brought upon a foreign judgment which was founded upon a gambling debt**, as opposed to a claim or an action to enforce a gaming contract or to recover monies pursuant to the gambling debt itself. A gambling debt must be distinguished from a judgment debt though founded upon a gambling debt. Since the plaintiff very wisely chose not to sue directly in the Singapore courts to recover the gambling debt, but instead sued and obtained various foreign judgments in various overseas jurisdictions, the factual circumstances were therefore entirely different. Apart from enlightening the court on what was the public policy position in relation to the recovery in Singapore of gambling debts incurred overseas, the numerous gambling cases cited to me by counsel for the defendant were therefore not directly on point and were not applicable to the case at hand because the plaintiff did not sue on the gambling debt in Singapore but sued on the foreign judgment he had obtained. The defendant argued that there should be no material difference between suing on the gambling debt incurred overseas and suing on the foreign judgment based on the same gambling debt. I rejected the defendant's argument. An action in Singapore to recover an overseas gambling debt was in my view materially very different from an action in Singapore upon a foreign judgment, although the cause of action underpinning that foreign judgment might be the same overseas gambling debt incurred by the defendant. The valid, final and conclusive foreign judgment **itself** was the basis of the present cause of action before me. In my view, an application could be made for summary judgment on the ground that there was no defence to this form of common law action in Singapore upon the foreign judgment. I further held that the issue whether or not a foreign judgment was "valid, final and conclusive" as between the parties must be answered not from the perspective of Singapore law but must be answered based on the laws of the foreign jurisdiction in which the court issuing that foreign judgment was sited. Expert evidence on foreign law must be led on this issue, which had to be determined as a question of fact in the Singapore court in accordance with the law of evidence in Singapore. Since counsel for the parties had not raised any issue in relation to whether the Second Judgment and for that matter the Nevada Judgment and the First Judgment were valid, final and conclusive foreign judgments, I assumed that they were and I did not have to decide this question of fact on the basis of the respective laws of Nevada and California.

41 I would now deal with the important question: whether an action in Singapore upon a valid, final and conclusive foreign judgment (which in turn was based on a successful claim on a gambling debt incurred in the foreign jurisdiction and adjudicated by a foreign court having the competent jurisdiction to do so) was an action that could not be brought or maintained in court pursuant to section 5(2) of the CLA.

42 The closest authority on the facts was the Court of Appeal decision in *Liao Eng Kiat v Burswood Nominees Ltd* [2004] 4 SLR 690 ("*Burswood*"). This decision, although not directly on point, was instrumental in guiding me to the determination of this question in favour of the plaintiff, *i.e. section* 5(2) of the CLA did not bar a common law action in Singapore upon a foreign judgment based on a foreign gambling debt.

43 In the case of *Burswood*, the Court of Appeal considered whether a default judgment of the Supreme Court of Western Australia should be registered in Singapore under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264) ("RECJA"). Briefly, the facts were that Liao Eng Kiat ("Liao") utilised the cheque cashing facility of Burswood casino in Perth, Australia, and issued his personal cheque for A$50,000 to the casino in exchange for a chip purchase voucher of that value. Liao then exchanged the voucher for A$50,000 worth of gambling chips, which he lost at the casino tables. The personal cheque was dishonoured upon presentation. Burswood later sued upon the dishonoured cheque in the District Court of Western Australia and obtained a default judgment against Liao. Essentially, the default judgment had been entered on a claim made for recovery of monies payable under a dishonoured cheque which had been given to the casino by the plaintiff in exchange for a chip purchase voucher. In substance, it was a gambling debt owed to the casino. Burswood successfully applied for registration of the judgment in the Singapore High Court under the RECJA. Liao then applied to set aside the registration on the basis that s 5(2) of the CLA and s 3(2)(f) of the RECJA precluded the registration on grounds of public policy.

44 Section 3(2)(f) of the RECJA reads as follows:

> No judgment shall be ordered to be registered under this section if the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.

45 It might be worth noting that a similar provision exists in the Reciprocal Enforcement of Foreign Judgments Act (Cap 265) ("REFJA"):

> **Cases in which registered judgments must or may be set aside**
>
> **5.** —(1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment —
>
> (a) shall be set aside if the registering court is satisfied —
>
> (v) that the enforcement of the judgment would be contrary to public policy in the country of the registering court;

46 The Court of Appeal decided that *Burswood*'s claim in Australia had been for money won upon a wager within the ambit of section 5(2) of the CLA. The Court of Appeal re-affirmed the approach taken in *Star City* in re-characterising Burswood's claim on Liao's dishonoured cheque as money won upon a wager, notwithstanding that a judgment was entered in a foreign court based on a different cause of action as pleaded in those proceedings. Yong CJ held at [14]-[17]:

14 It is settled law that whilst s 5(1) of the CLA only renders the original wagering or gaming contract null and void, s 5(2) strikes down as unenforceable all other contracts to pay the sum won upon a wager. As we pointed out in *Star City*, the success of the casino's claim depended on the characterisation of the transaction in question. If the transaction was characterised as a loan, the action on the loan itself would succeed as long as the loan was valid under its governing law. In contrast, if the court characterised the transaction as an action to recover money won upon a wagering contract, s 5 of the CLA would preclude recovery of the money.

16 … Burswood sought to obviate this problem by persuading us that we were not free to re-characterise Burswood's claim. Instead, Burswood said that we should limit ourselves to the causes of action contained in the Australian judgment. In other words, this court should only consider whether the original causes of action based on dishonour of a cheque and breach of the CCF were against Singapore public policy. We had no difficulty dismissing this argument. We were of the opinion that we were entitled to look beyond the technical causes of action before the Australian court to the context in which these causes of action arose when deciding whether s 3(2)(f) should apply to preclude registration of the Australian judgment.

47 The court did not, however, decide whether or not under s 5 of the CLA, the fact that the substantive claim before a foreign court was basically a claim derived from a gambling debt, *per se*, would bar the enforcement by way of an action in Singapore based on the foreign judgment derived from that gambling debt. Rather, the court went on to consider whether or not the domestic rule of public policy in s 5 of the CLA led to the conclusion that enforcement was excluded by s 3(2)(f) of the RECJA, because the foreign judgment:

> was "in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court". (at [23], quoting s.3(2)(f) RECJA)

48 I agreed with counsel for the plaintiff that it was thus implicit in the reasoning of the Court of Appeal that s 5(2) CLA did not operate *directly* to preclude **claims to enforce judgments** entered in actions to recover monies pursuant to gaming contracts. Indeed, in *Burswood* the Court of Appeal distinguished the case of *Star City* on the basis that, whereas in *Star City* the claim was brought on the dishonoured cheque, in *Burswood* the plaintiff had already obtained judgment and was seeking to have that judgment registered for the purpose of enforcement.

49 It was noteworthy what the Court of Appeal had observed at [42] –[46]:

> 42 It remained for us to decide whether our domestic public policy, which has thus far seen our courts set their face against the enforcement of gambling debts, is so important as to form part of the core of essential principles of justice and morality shared by all nations, thus raising it to the level of "international" public policy. We were not so persuaded.
>
> 43 First, the various cases discussed earlier in this judgment indicate quite clearly that other nations do not view the recognition of foreign judgments on gambling debts as being against fundamental principles of justice and morality
>
> …
>
> 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:

> 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."

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.

50 The Court of Appeal upheld the registration of Burswood's foreign judgment. Burwood's registered judgment would thereafter have the same force and effect, and execution and other enforcement proceedings might be taken thereon, as if it had been a judgment of the Singapore court originally entered upon the date of registration. The Court of Appeal held that the exception under s 3(2)(f) of the RECJA would not have applied to preclude the registration of Burswood's foreign judgment. A higher standard of public policy applied under the RECJA before refusing registration of a foreign judgment.

51 I agreed with counsel for the plaintiff that there was no sensible reason for distinguishing between the relevant public policy considerations at common law and under statute for enforcement action upon a foreign judgment obtained on a gambling debt. Indeed the Court of Appeal's discussion of public policy began with and was based upon an examination of common law principles: see [26] – [32], and the Court of Appeal, after a survey of the approach taken by foreign courts, said:

> 32 A survey of these cases made it apparent that there is a higher standard of public policy in operation when a forum court is faced with a foreign judgment, as opposed to a domestic issue being litigated for the first time in the forum court. Foreign courts appear very reluctant to invoke the expedient of "public policy" to justify a refusal to recognise a foreign judgment, even if their domestic public policy would have precluded enforcement of the underlying claim.

52 Recognition of a foreign judgment for the purposes of its enforcement in Singapore in reality and in substance extended, in my view, to allowing an action upon a foreign judgment to obtain a substantive Singapore judgment so that execution and other modes of enforcement under it may proceed. A claim may therefore be brought at common law in Singapore premised on an implied debt created by that foreign judgment for the same purpose of achieving "enforcement" so to speak of that foreign judgment in Singapore. It should not matter whether the foreign judgment was one where reciprocal arrangements had allowed a simpler process of "enforcement" by way of registration or one

where common law action must invariably be taken upon the foreign judgment for the purpose of "enforcement" because no such reciprocal arrangements existed.

53 After a careful consideration of principles and the public policy grounds elucidated in *Burswood,* I held that s 5(2) of the CLA did not preclude the plaintiff's claim in this case. Had s 5 (2) procedurally precluded recovery based on an action upon the foreign judgment (of a Commonwealth state) entered on the "gambling debt" as characterised by the Singapore court, then s 3(2)(f) of the RECJA would have applied and that foreign judgment would not likely be registrable because it would have been "in respect of a cause of action which **for reasons of public policy** or **for some other similar reason** could not have been entertained by the registering court."

54 Further and for reasons based on the doctrine of comity of nations in relation to the recognition of the judgments of the courts of a foreign jurisdiction as being "enforceable" by way of a separation action in Singapore (irrespective whether the process of its registration as a Singapore judgment was available), I did not believe that the public policy in Singapore ought to favour the evasion of foreign judgments by persons who borrowed money abroad for the purpose of gambling abroad and after having lost those borrowed money on gambling thereafter sought to evade responsibility for those foreign judgment debts after judgment in a foreign court had been successfully obtained against them. International comity also meant that foreign court judgments should be accorded appropriate levels of deference and respect.

55 I did not think that the law would be seen to make much sense when a gambler would have to face, in Singapore, the consequences of having to repay a judgment debt arising out of his gambling debt just because he happened to gamble in a casino in a country forming a part of the Commonwealth; but he would simply be able to walk away completely free from those judgment debts if he fortuitously incurred his gambling debts in a casino in a non-Commonwealth state, because the casino there would never be able to enforce in Singapore any foreign court judgment entered on that gambling debt by way of an action in Singapore upon the judgment debt since that non-registrable foreign judgment had been grounded on a gambling debt incurred in the non-Commonwealth state. If so, then the liability to pay the gambling debt essentially depended on whether he gambled and lost on borrowed money in a casino in a Commonwealth State or a non-Commonwealth State. And if it was a non-Commonwealth State, it would further depend on whether or not the foreign judgment on the gambling debt was registrable under the REFJA. If it was registrable under the REFJA, he would not be able to walk free of the gambling debt but he would walk free if the foreign judgment would not be registrable. If that was how the public policy in Singapore was going to work, then it would be quite extraordinary in my view. I would rather prefer to adopt a view of public policy in relation to enforcement of foreign judgments on gambling debts that would result in a similar, consistent and sensible outcome (a) regardless where the gambling debt was incurred and whether the foreign judgments were from the courts of those States with or without reciprocal enforcement arrangements under either the RECJA or the REFJA; and (b) irrespective of the mode of enforcement of the foreign judgment that would be allowed under Singapore law. In summary, section 5(2) CLA should not debar a common law action in Singapore upon a foreign judgment founded on a gambling debt or debar a registration of such a foreign judgment under the RECJA or the REFJA as the case may be for the purpose of its enforcement.

56 I therefore rejected the submission of the defendant's counsel that when a foreign judgment was sued upon in Singapore as an implied contractual debt (as opposed to enforcement through registration pursuant to some reciprocal enforcement provisions), the public policy prohibition as encapsulated under s 5(2) of the CLA should apply to strike down such an action because there existed a fundamental difference between an action based upon a foreign judgment and an application to register a foreign judgment under either the RECJA or the REFJA for enforcement purposes.

Second question: is the time bar for action upon a foreign judgment 6 or 12 years?

57 Section 6(3) of the LA clearly states that an action upon any judgment should not be brought after the expiration of 12 years from the date on which the judgment became enforceable.

58 The critical issue here would be whether "an action upon **any judgment**" in s 6(3) included a foreign judgment or was it limited only to a Singapore judgment. If the words "any judgment" included a foreign judgment, then the time bar for an action upon the foreign judgment in Singapore would not be 6 years but would be 12 years. However, if the words "any judgment" excluded a foreign judgment and was limited only to a domestic judgment, then the time bar for enforcement of a foreign judgment by way of an action brought at common law to enforce the implied contract or promise to pay the foreign judgment debt would be governed by s 6(1)(a), in which case the time bar would be 6 years.

Meaning of "an action upon any judgment"; and "execution" versus "action" upon a judgment in relation to s 6(3) of the LA

59 In *Lowsley v Forbes (t/a L.E. Design Services)* [1998] 3 W.L.R. 501, the plaintiffs, with the leave of the court, obtained garnishee and charging orders nisi against the debtor eleven-and-a half years after they had obtained a consent judgment. The House of Lords upheld the decision of the Court of Appeal refusing the application by the judgment debtor to set aside the orders on the ground that they were statute-barred under s 24(1) of the UK Limitation Act 1980. The House of Lords held that the word "action" in s 24(1) meant a fresh action upon a judgment for another substantive judgment and did not include proceedings by way of execution, which could still proceed despite the expiration of more than six years from the judgment. Accordingly, the section did not bar execution of a judgment after six years, but only barred the bringing of a fresh action on the judgment. Lord Lloyd cited with approval the ruling of Brandon J in *Berliner Industriebank Aktiengesellschaft v Jost* [1971] 1 QB 278 at 293 that the distinction –

> "between the right to sue on a judgment (which is a substantive right) and the right to issue execution under it (which is a procedural right or remedy) has always been recognised in the law of limitation…"

60 In *Ridgeway Motors (Isleworth) Ltd v ALTS Ltd* [2005] 2 All ER 304, a judgment creditor presented a winding up petition based on a judgment that was more than 6 years old. The judgment debtors' attempt to strike out the winding up petition on the basis that it was statute-barred after the expiration of 6 years from the date on which the judgment became enforceable was dismissed. It was held that "an action upon a judgment" had the special or technical meaning of a "fresh action" brought upon a judgment in order to obtain a second judgment, which could be executed. Insolvency proceedings, whether personal or corporate, did not fall within the scope of that special meaning and it was not open to the court to interpret the expression "action upon a judgment" in s 24 (1) of the 1980 Act in the sense indicated by the extended definition of "action" in s 38(1) which stated, *inter alia*, that "*[i]n this Act, unless the context otherwise requires, "action" includes any proceeding in a court of law, including an ecclesiastical court.*" Mummery LJ in the English Court of Appeal said:

> There is, in my opinion, much to be said for the submission of Mr Anthony Mann QC (as he then was) appearing as counsel for the plaintiff judgment creditors in Lowsley's case [1999] 1 ACT 329 at 333: "There are good policy reasons for distinguishing between action and execution. Limitation statutes are intended to prevent stale claims, to relieve a potential defendant of the uncertainty of a potential claim against [him] and to remove the injustice of increasing difficulties of proof as time goes by. These considerations do not apply to execution. If it is unfair to have a judgment debt outstanding with interest running at a high rate, the debtor has the remedy of

paying the debt or taking out his own bankruptcy if he cannot pay it.

61 Section 6 (3) of the LA is almost identical with section 24 of the English Limitation Act 1980 except that the period of limitation is 12 years in Singapore but 6 years in England for a fresh "action" upon "any judgment." Previously, the limitation period was also 12 years in England. See the English Limitation Act 1939. Section 24 of the English Limitation Act 1980 reads as follows:

> **24 Time limit for actions to enforce judgments**
>
> (1) An action shall not be brought upon any judgment after the expiration six years from the date on which the judgment became enforceable.
>
> (2) No arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.

62 In England as it is in Singapore, a judgment although interest bearing for only 6 years, remains "open ended" and enforceable by way of a writ of execution without any time bar. But under Order 46, enforcement of an English judgment after 6 years by way of writ of execution requires leave of the English Court: Good Challenger Navegante S.A. v Metalexportimport SA [2003] EWCA Civ 1668. However, it does not appear that other forms of execution on a judgment (e.g. garnishee proceedings) come within Order 46, where leave of court is required.

63 In the LA, unless the context otherwise requires, an "action" also includes a suit or any other proceedings in a court. Basically, there are two ways of enforcing a judgment: by execution and by action. However, a writ of execution does not come within s 6 (3) of the LA, a stand that I would take in reliance on the authorities above. The Court of Appeal in *Tan Kim Seng v Ibrahim Victor Adam* [2004] 1 SLR 181 at [29] also observed that there was a distinction between "execution" and "an action upon any judgment" and referred to Halsbury's Laws of England, Vol 28 (4th Ed, Reissue, 1997) at [916]:

> [A]n action upon a judgment applies only to the enforcement of judgments by suing on them and does not apply to the issue of executions upon judgments for which the leave of the court is required, after six years have elapsed, by RSC Ord 46 r 2(1)(a); in matters of limitation the right to sue on a judgment has always been regarded as quite distinct from the right to issue execution under it, but the court will not give leave to issue execution when the right of action is barred.

64 As such, the law of limitation of actions would not affect the rules in relation to execution (and would also not apply to applications to levy execution for that matter). If it did, then an argument could be made that Order 46 Rule 2 which subjected the writ of execution to enforce a judgment or order to the leave of the court where 6 years or more had lapsed since the date of the judgment or order could be in conflict with s 6(3) of the LA which allowed 12 years for bringing an action upon any judgment as of right under the statute. Further, the fact that the court could theoretically grant leave to the plaintiff to issue a writ of execution to enforce a judgment even after more than 12 years had elapsed would appear to contradict the time bar set out in s 6(3) of the LA, if that section was intended to apply to enforcement of a judgment by way of a writ of execution. If a matter was time barred under the LA, a court would not have the power or the discretion to extend time beyond the time bar by granting leave.

65 The policy reasons for distinguishing between "action" and "execution" as set out by Mummery LJ (see [60] above), and the reasons why the considerations of potential defendants being

subjected to the uncertainty of stale claims and the injustice of increasing difficulties of proof with time did not apply to the procedural steps needed for execution on a judgment already obtained (as opposed to that of a fresh substantive action upon a judgment) made much sense to me. They also explained the rationale for the absence of a time bar for the procedural enforcement of a judgment like the writ of execution or other modes of enforcement; and why a case of a fresh action on a judgment to obtain another substantive judgment must be treated differently and be made subject to a time bar. If a limitation period were to exist for execution of a judgment, then a clever judgment debtor can simply avoid payment of the judgment debt by hiding his assets well and keeping them out of reach of the judgment creditor as long as possible by using the international financial and banking systems and setting up shell companies or trusts in overseas jurisdictions to hold and hide his assets. The existence of a time bar for procedural execution may incentivise a judgment debtor to frustrate the judgment creditor's search for his assets until the execution on the judgment against him is time barred. Passage of time should not on principle be allowed to morph into an instrument to extinguish a judgment debt and make a mockery of the execution process on a judgment of the court.

66 Public policy and the interests of justice should instead lean in favour of the position that it is for the judgment debtor to seek out the judgment creditor and settle the judgment creditor's judgment debt expeditiously. There is no good reason why the court should favour cat and mouse games that are usually played out when judgment debtors use all possible means to delay and if possible evade enforcement or execution. The court ought not to favour those who have no qualms about flouting orders of court to pay on judgment debts.

67 A time bar for procedural execution of a judgment would have the inadvertent and unintended effect of encouraging such cat and mouse games. The resources of both the court and the judgment creditor are often expended unnecessarily whereby the judgment creditor has to search far and wide for the assets of the judgment debtor, take up numerous court enforcement measures and try to execute on the judgment that he has obtained, probably with much effort and costs on his part already. It would not make sense to make it more difficult for the judgment creditor to obtain the fruits of the judgment he has obtained by imposing a time bar for procedural execution on judgments in the LA. A judgment debtor ought to recognise the authority of the order of the court directing that he, the judgment debtor, pays the judgment creditor. By not paying, it is the judgment debtor who is breaching the order of the court for him to pay. It is important to note that a judgment is no longer a claim but an order of court to be obeyed by the judgment debtor after the claim has been adjudicated by the court in favour of the judgment creditor. The judgment creditor as the winning party tries to ensure that the judgment as an order of the court is respected and obeyed by the losing party (and is not rendered a paper judgment to be treated with scorn and disdain). Hence, for good public policy reasons, the court should lean in favour of assisting the winning party rather than the losing party. This in my view is a good reason to interpret "action upon any judgment" in s 6(3) of the LA restrictively to exclude a writ of execution on a judgment and all other modes of enforcement like garnishee proceedings, charging orders and insolvency proceedings, for which the LA does not prescribe any time bar, and accordingly, a judgment obtained is never "dead" because procedural execution on it always remains possible.

68 I recognise the existence of Order 46 rule (2) where a writ of execution (which includes a writ of seizure and sale, a writ of possession and a writ of delivery) to enforce a domestic judgment or order may not be issued without the permission of the court where 6 years or more has elapsed but this does not mean that a time bar of 6 years has thereby been created. A statutory limitation must be created by way of an Act of Parliament as in the Limitation Act, and not in some subsidiary legislation (e.g. in the Rules of Court) since a time bar has the effect of taking away a substantive right, *i.e.* enforcement of a domestic judgment by way of a writ of execution. I further note that Order 46 is limited in its scope and it applies only to a writ of execution but not other forms of

enforcement on a judgment. Although there is no time bar, the court should nevertheless, for good administration of justice, monitor enforcement of its judgments by way of a writ of execution if more than 6 years had elapsed, which I believe is the rationale for Order 46. Order 46 rule (2) balances the need to allow time for unhindered execution on a judgment by the judgment creditor and the need to see that the judgment creditor does not sit on his hands and make no real effort to search for the assets of the judgment debtor and use the appropriate enforcement measures to satisfy his judgment debt. The requirement for the court's discretionary leave as prescribed under Order 46 is more a procedural and monitoring measure than a substantive mandatory measure to extinguish execution on a judgment the moment 6 years or more has elapsed since the date of the judgment. In any event, if such a substantive mandatory measure amounting to a statutory time bar was intended, then it should more appropriately be made by amending the LA than by inserting it as a rule within the Rules of Court.

Arguments in favour of a 12 years time bar pursuant to s 6(3) LA for an action upon a foreign judgment

69 I will first present the arguments that favour an interpretation that an action upon a foreign judgment fell within s 6(3) of the LA and accordingly, a statutory time bar of 12 years applied.

70 As a starting point, the Report of the Law Reform Committee on the Review of Limitation Act (Cap 163) of the Singapore Academy of Law at [184] appeared to suggest that suing on a foreign judgment came within the ambit of s 6(3) of the LA. Although the report did not explicitly say so, it nevertheless discussed the enforcement of these foreign judgments in the context of s 6(3) and not s 6(1)(a) of the LA.

71 Judgment is not defined in the LA to be restricted only to domestic judgments. In fact, no definition of "judgment" is given in the LA. There is no good reason to read "any judgment" restrictively to exclude foreign judgments in the LA. A judgment is a judgment of a court, whether foreign or domestic. For comity reasons, it should be regarded as such and not as an "implied contract" so as to contort it as an "action founded on a contract" to fit within s 6(1)(a) of the LA.

72 An examination of section 6 the LA shows*, inter alia*, that:

(a) no distinction is made between an action founded on a domestic or foreign contract or tort;

(b) no distinction is made between an action to enforce a domestic or foreign award;

(c) no distinction is made between an action for an account brought in respect of any domestic or foreign matter.

73 The structure of the LA appears not to make any distinction or division between foreign causes of action (over which the Singapore court would have jurisdiction to try) and domestic causes of action. If so, then there is also no good reason to construe the word "judgment" in s 6(3) restrictively and limit it only to domestic judgments (and exclude foreign judgments from its ambit.) The treatment then becomes inconsistent when seen from the perspective of the overall structure of the LA.

74 In practice in England, actions on any judgment (made subject to s 24(1) of the Limitation Act 1980) are rare since they will be dismissed as an abuse of the process of the court if the ordinary process of execution on the judgment in question is available: Limitation of Actions by Oughton, Lowry and Merkin, 1998 Edn at p 137. Hence, it will be rare to sue on a domestic judgment since other means of enforcement are readily available. However, for foreign judgments and in particular

those for which registration is unavailable, a fresh action upon the foreign judgment appears to be the main mode of enforcement (Limitation Periods 5th Edn 2006 by Andrew Mc Gee at 17.005). The substance of a fresh action taken upon a foreign judgment for the purpose of obtaining a Singapore judgment so that the foreign judgment could be enforced would better fit the interpretation of s 6(3) than s 6(1)(a) both in substance and form. An action upon a **foreign judgment,** just as an action upon a **domestic judgment,** will give rise to an **independent cause of action**, in the "nature of a claim for a debt", which arises at the time the original judgment is made. It is important to note that a fresh action upon a **domestic** judgment, which is also in the nature of an implied contract, is not subject to a limitation of 6 years pursuant to s 6(1)(a) but is subject to a limitation of 12 years pursuant to s 6(3) of the LA. If so, then it is quite extraordinary that the limitation for an action upon a **foreign** judgment should be shunted to s 6(1)(a) whereas the limitation for an action upon a **domestic** judgment stays with s 6(3) of the LA, when the juridical basis for a fresh action upon the judgment is the same in both cases. The concept of an "implied contract" is created to enable the action upon the foreign judgment to be proceeded with and to provide a philosophical or jurisprudential basis to support the cause of action as if it was an action on a simple contract debt, but it should not convert a foreign judgment into a contract (or a foreign judgment debt into a contractual debt), when it is not so in substance and in reality. A binding judgment is not quite the same as a binding contract, irrespective whether it is a domestic or foreign judgment. A foreign judgment debt is an obligation imposed by the foreign court on the judgment debtor to pay and it does not constitute a consensual and voluntary obligation agreed to by one contracting and consenting party to pay the sum stated in the foreign court judgment to the other contracting and consenting party as a matter of contract. As was stated by Alderson B in *Williams v Jones* (1845) 13 M. & W. 628:

> The true principle is, that where a Court of competent jurisdiction adjudges a sum of money is to be paid, an obligation to pay it is created thereby, and an action of debt may therefore be brought upon such judgment. This is the principle on which actions on foreign judgments are supported.

75 Since s 24 in the English Limitation Act 1980 is not concerned with procedures to enforce judgments already obtained but only with substantive rights to bring an action on a judgment (*WT Lamb & Sons v. Rider* [1948] 2 KB 331, *National Westminister Bank v. Powney* [1991] Ch 339, *Lowsley v Forbes* [1996] CLC 1370), that is exactly what in substance a similar action on a foreign judgment amounts to.

76 The same juridical basis to "enforce" a **domestic** judgment by bringing a second action on the basis that it is an action of debt upon the first judgment, does not cast the second action as falling within s 5 of the UK Limitation Act 1980 for the purpose of limitation, thus showing that s 24 remains the governing provision. Section 5 of the said 1980 Act is largely similar to s 6(1)(a) of the LA and it states that:

> An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued.

77 The Supreme Court of Canada in *Morguard Investments Ltd. v. De Savoye* [1990] 3 S.C.R. 1077 had advocated international comity whereby decisions of foreign courts are afforded appropriate levels of deference and respect. To treat domestic and foreign judgments differently in relation to the application of s 6(3) LA would run contrary to the principles set out in *Morguard*.

78 In the Ontario Supreme Court case of *Girsberger v. Kresz* et al.,(2000) 47 O.R. (3d) 145, Cumming J stated:

[45] In the light of these decisions and the clear evolution of the principles of comity, order and fairness, I fail to understand why the characterization of in personam foreign judgments from beyond Canada as simple contract debts should be the law. In the 19th century, the reasoning behind the historical characterization of in personam foreign judgments, as I understand it, was the need for Canadian courts to create a new "starting point" when a foreign judgment was recognized and enforced. The principle of territoriality incited the English courts to create a new "starting point" which inferred a promise to pay the amount of judgment as thought it was simple contract debt: see Bedell v Gefaell (No. 1), [1938] O.R. 343 at p. 724, [1938] 4 D.L.R. 467 (C.A.)

[46] In the light of Morguard, Canadian courts no longer need to continue to apply this legal fiction… Why not recognize truly foreign judgments for what they are, "judgments?"

[47] The Supreme Court of Canada in Morguard, Hunt and Tolofson recognized that the old common law rules relating to the recognition and enforcement of a judgment in personam emanating in one province within the rest of Canada were rooted in an outmoded conception of the world which emphasized sovereignty and independence. In my view, the case law which characterizes a foreign judgment from beyond Canada as a simple contract debt is also an outmoded conception which emphasizes sovereignty and independence at a substantial cost of unfairness to he party wishing to have its foreign judgment enforced in Canada.

[48] The principle of comity must evolve to work in the postmodern era of international transactions and the constant flow of people, products and skills across national and international borders. This leads me o the conclusion that the characterization of recognized and enforced foreign judgments as simple contract debts is dated. As Sharpe J. stated, I the United States of America v. Ivey, Canadian courts should give 'full faith and credit' to foreign judgments originating from the United States. Consequently, if an Ontario court applies the real and substantial connection test as defined in Morguard and finds that the foreign court has exercised appropriately its jurisdiction, then 'full faith and credit' should be given to that foreign judgment. The Ontario court should recognize and enforce such foreign judgments as 'judgments' and not as contract debts. Given the new developments of the principle of comity, Canadian courts must move away from the idea that foreign judgments must be relitigated.

[49] So long as the court in a foreign country has properly and appropriately exercised jurisdiction in an action, that court's judgment should be given full faith and credit in Ontario. Recognized and enforced foreign judgments should be recognized as 'judgments' and not as an implied agreement between the parties to pay the amount of the foreign judgment. This characterization of foreign judgments would permit litigants to enforce heir judgment within the 20-year limitation period provided by s. 45(1)(c) of the Limitations Act. In light of the evolution of the law applicable to the recognition and enforcement of foreign judgments and the fluidity of parties, transactions and assets in our era of globalization, a 20-year limitation period appears to be more appropriate and fair.

79 In *Owens Bank Ltd. v Bracco* [1992] 2 A.C. 443, 484 Lord Bridge of Harwich said:

A foreign judgment given by a court of competent jurisdiction over the defendant is treated by the common law as imposing a legal obligation on the judgment debtor which will be enforced in an **action on the judgment** by an English court in which the defendant will not be permitted to reopen issues of either fact or law which have been decided against him by the foreign court. (Emphasis added.)

80 In the recent English Court of Appeal decision in *Tsasarruf Mevduati Sigorta Fonu v Demirel and*

another [2007] 1 WLR 2508 ("*TMSF*") at [41], Sir Anthony Clarke MR delivering the judgment of the court applied s 24 (**and not s 5**) of the English Limitation Act 1980 in deciding what was the time bar for enforcing a Turkish judgment by way of action in England. The English Court of Appeal therefore regarded a fresh action upon the foreign Turkish judgment to be governed by the limitation period prescribed by s 24 (the equivalent of s 6(3) of the LA) and **not** by s 5 (the equivalent of s 6(1)(a) of the LA). Indeed, it is with regard to foreign judgments that s 24 retains its principal relevance: see McGee, *Limitation Periods*, 5th Edn., 2006, para 17.005. Accordingly, in Singapore s6(3) of the LA should be the applicable provision for a fresh action on both a domestic and a foreign judgment, and not s 6(1)(a) of the LA. If so, then the limitation period is 12 years and not 6 years for a fresh action upon either a domestic or a foreign judgment. Section 24 of the English Limitation Act 1980 was in fact based on s 2(4) of the English Limitation Act 1939 which provided that

> An action shall not be brought on any judgment after the expiration of **twelve** years from the date on which the judgment became enforceable, and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.

81 As a matter of principle, the juridical basis for a claim brought upon a foreign judgment should not have a decisive bearing on the interpretation of a statute of limitation, and this had been borne out by the English Court of Appeal decision in *TMSF*. The plain, ordinary and natural meaning of "any judgment" in Section 6(3) of the LA should be given effect to and should be interpreted without any qualification to include both a foreign and a domestic judgment.

82 For the reasons set out above, it would be in my view preferable to follow the approach of the English courts over that adopted by the Canadian courts (see the decisions of the Canadian courts cited below) and to hold that the time bar for commencing a fresh action upon any judgment, be it a foreign or domestic judgment, should be 12 years as set out in s 6(3) of the LA and not 6 years as set out in s 6(1)(a) of the LA.

Arguments in favour of a 6 years time bar pursuant to s 6(1)(a) LA for an action upon a foreign judgment

83 I now present the arguments that favour an interpretation that an action upon a foreign judgment fell within s 6(1)(a) of the LA and accordingly, a statutory time bar of 6 years applied:

(a) A foreign judgment creates a simple contract debt, and an action to enforce a foreign judgment is an action upon a simple contract debt: *Rutledge v United States Savings and Loan Co.* (1906) 37 S.C. R. 546; *Yugraneft Corp. v. Rexx Management Corp*. [2007] A.J. No 749. Therefore the applicable limitation period for an action founded on that simple contract debt is six years under s 6(1)(a). "[A]ny judgment" in s 6(3) of the LA should be interpreted as being limited to domestic judgments, and should not be extended to include foreign judgments.

(b) While a domestic judgment can be directly enforced by execution, the same is not true with a foreign judgment. Unless a foreign judgment is registered pursuant to the RECJA or the REFJA, a foreign judgment cannot be enforced without first suing on the judgment and obtaining a domestic judgment against the debtor for domestic enforcement purposes. Hence the distinction between an action upon a foreign judgment and an action upon a domestic judgment must be reflected in the application of s 6(3) of the LA to "an action upon any judgment."

(c) Cumming J's decision in *Girsberger v. Kresz* et al.,(2000) 47 O.R. (3d) 145 was overruled by the Ontario Court of Appeal in *Lax v Lax* (2004), 70 O.R. (3d) 520 (C.A.) , where Feldman J

stated that:

> [30] This analysis demonstrates that as a procedural matter, for purposes of enforcement, foreign judgments and domestic judgments are not equivalent. Gumming J.'s position in *Girsberger* is that, in order to give foreign judgments the full faith and credit that our new approach of comity among nations requires, we must apply the same limitation period for enforcement of both types of judgments. Therefore, the old Limitations Act must be interpreted to reflect that approach and to accomplish that goal.
>
> [31] In my view, although there is merit in the philosophical approach advocated by Cumming J., in order to achieve the type of parity between domestic and foreign judgments that he is advocating, more significant changes must be made to the enforcement scheme than interpreting "judgments" in s. 45(1)(c) to include a foreign judgment. This would require legislative action. As long as only domestic judgments can be enforced by execution and other methods discussed above, and therefore foreign judgments must be transformed not domestic judgments before they are enforceable as domestic judgments, there is not parity of treatment.

(d) Chrumka J. in *Yugraneft Corp. v Rexx Management Corp*., [2007] 10 W.W.R. 559, while agreeing that there was merit to the argument that a more modern approach in keeping with the principles of comity may be required with respect to foreign judgments, viewed that legislative intervention might be necessary. In his opinion, the current status of the law was that the applicable limitation period was two years for an action to enforce a foreign judgment which is based upon a simple contract debt.

(e) The Supreme Court of Nova Scotia in the case of *Pollier v Laushway* [2006] NSJ No 215 said:

> "[17] Historically, there has been a distinction in Canada between domestic and foreign judgments when it comes to both enforcement and limitation periods. For example, in Nova Scotia, a domestic judgment can be directly enforced by execution. The situation is different with foreign judgments. Unless a foreign judgment is registered in this province pursuant to the *Reciprocal Enforcement of Judgments Act* (which application for registration must be made within six years from the date of the judgment) a foreign judgment cannot be enforced without first suing on the judgment and obtaining a domestic judgment against the debtor. Once a domestic judgment is obtained, it can be enforced the same way as all domestic judgments and is subject to a twenty year limitation period.
>
> [18] In relation to the applicable limitation period for such actions, it has long been held that an action to enforce a foreign judgment is an action upon a simple contract debt (see for example **Rutledge v. United States Savings and Loan Co**. (1906), 37 S.C.R. 546.) Castel and Walker in *Canadian Conflict of Laws* 6th Ed., (Butterworths, 2005) explain the matter at14-3 as follows:
>
> A foreign judgment is regarded as creating a debt between the parties to it, which is said to be based on the judgment debtor's implied promise to pay the amount of the foreign judgment; …The debt so created is a simple contract debt and not a specialty debt, and it is subject to the appropriate limitation period…."
>
> ….

[26] While I agree with the suggestion in **Lax**, *supra*, that there is merit in the philosophical approach advanced by Cumming J. in **Girsberger**, *supra*, I conclude that the law remains that an action to enforce a foreign judgment is an action upon a simple contract debt and in Nova Scotia, the applicable limitation period for such an action is six years after the cause of any such action arose.

(f) Kan J in *Westacre* Investments *Inc v Yugoimport-SDPR* [2007] 1 SLR 501 said at [15]:

The Limitation Act imposes a time limitation when a party seeks to sue on a foreign money judgment in Singapore. Such an action would be a claim in contract as a foreign money judgment creates an implied contract by the judgment debtor to pay the judgment sum to the judgment creditor, as has long been established by *Duplexi v De Roven* (1705) 2 Vern 540; 23 ER 950 and *Grant v Easton* (1883) 13 QBD 302. In such a situation, s 6(1)(a) of the Limitation Act would apply and extinguish the right to sue when six years have elapsed from the date of judgment.

(g) In *Murakami Takako (executrix of the estate of Takashi Murakami Suroso, deceased) v Wirayadi Louise Maria and others* [2007] 4 SLR 565 ("*Murakami*"), the Court of Appeal in Singapore held at [34] and [40] that the first respondent's counterclaim, founded on Indonesian Judgment 203 and made only on 4 July 2006, was time barred unless the first respondent's rights under Indonesian Judgment 203 delivered on 23 February 2000 had been subsequently acknowledged by the appellant, which the appellant did on 29 April 2005, thus extending the limitation period for reliance on the Indonesian Judgment 2003 as from 29 April 2005. From the facts, it could be readily inferred that the 6 years time bar under s 6(1)(a) was applied by the Court of Appeal and not a 12 years time bar under s 6(3) of the LA.

84 As the Court of Appeal in *Murakami* had essentially held that the time bar for a fresh action upon an Indonesian judgment 203 for enforcement was 6 years, it implicitly meant that the Court of Appeal had ruled that the applicable time bar provision was s 6(1)(a) and not s 6(3) of the LA for a fresh action to enforce a foreign judgment in Singapore. As such, I would take the position that I was bound by this Court of Appeal decision to hold that fresh actions for enforcement in Singapore upon the Nevada Judgment and the First Judgment were time barred, but not if the fresh action was upon the Second Judgment.

85 Since an appeal had been filed against my decision, the Court of Appeal would have the opportunity to re-visit this issue on whether s 6(1)(a) or s 6(3) of the LA applied to an action upon a foreign judgment for the purpose of enforcement in Singapore.

Third question: was the enforcement action upon the Second Judgment or some other earlier Nevada Judgment (or the First Judgment)?

86 Having decided that the time bar for the enforcement of a foreign judgment by way of a common law action was 6 years under s 6(1)(a) of the LA, I would have to proceed to answer the third question on whether or not the plaintiff's enforcement action was to be regarded effectively as a fresh action upon the Nevada (or the First Judgment) and not upon the Second Judgment as presented in the statement of claim for the purpose of limitation.

87 Counsel for the defendant contended the following in his written submissions:

25. ….[I]f a careful look is taken at the Second Judgment, it is clear that the nature of the judgment was to:

(a) set aside the transfer of the Defendant's one-third interest in the Property to Surepath;

(b) levy execution upon the one-third interest to have it sold by the Santa Clara County Sheriff under a Writ of Sale in order to satisfy, in part or in full, the First Judgment; and

(c) if there were insufficient proceeds from the sale to satisfy the First Judgment in full, affirm that the Defendant shall remain liable for any such deficiency thereon.

26. The real nature of the Second Judgment is in fact clear from the Plaintiff's own Affidavits. At paragraph 7.3 of James Arlen Stearman ("Stearman")'s Affidavit, he referred to the proceedings which resulted in the Second Judgment as a *"fraudulent conveyance lawsuit".* In the following paragraph (paragraph 7.4), Stearman deposes that after the Second Judgment was rendered, he filed a single partition action, the purpose of which was *"to force the sale of the entire subject real property to partially satisfy [the First Judgment] out of the Defendant's separate one-third interest in the said property."*

27. The clear aim and intention of the Second Judgment was therefore, as Stearman himself recognised, to force a sale of the Property to partially satisfy the First Judgment out of the Defendant's one-third share thereof. No basis exists for the assertion that the Second Judgment was to create a brand new cause of action which "re-sets the clock" on the limitation period of what is essentially the same debt and cause of action which arose in the Nevada Judgment (the original judgment). The clear purpose of the Second Judgment was to satisfy in part the First Judgment and to affirm that the Defendant remained liable to the Plaintiff for the balance of the First Judgment. It did not create a fresh obligation of payment.

28. Fundamentally, it must be the case that the Plaintiff's claim against the Defendant is for payment of a debt incurred at the gaming tables in Caesars Palace in 1997. The Second Judgment does not create the implied contract by the Defendant to pay that gaming debt.

29. Finally, there is also authority to the effect that where there are two competing foreign judgments, the earlier in time will prevail. In the case of *Abdul Rahman Showlag v Abdel Moniem Mansour* 1 AC 431 which was a Privy Council decision from the Court of Appeal of Jersey, the legal representatives of S found that two deposits held in London banks had been transferred to an account in Switzerland in the name of a company incorporated in Panama which was wholly owned by the defendant, a former employee of S. The legal representatives believed the money had been stolen whereas the defendant claimed that it was a gift by S. The money had been dispersed to a number of different countries, including Jersey and Egypt. The plaintiffs instituted proceedings in various jurisdictions. On 5 December 1990 the plaintiffs obtained a judgment against the defendant in an English court which found that the money was not a gift and had been obtained by fraud. However, an Egyptian appeals court found on 23 May 1991 in criminal proceedings against the defendant that the defendant had received the money as a gift and thus dismissed the plaintiffs' civil claim against him. In subsequent proceedings in Jersey, the court at first instance found the issue as to whether the deposits had been stolen was res judicata by virtue of the English judgment. The case found its way to the Privy Council which held that the correct general rule was that where there were two competing foreign judgments, each pronounced by a court of competent jurisdiction and final and not open to impeachment on any ground, the earlier of them in time must be recognised and given effect to the exclusion of the later.

30. It is therefore submitted on behalf of the Defendant that of all the three judgments which

the Plaintiff has obtained against the Defendant, it is the first in time, i.e. the Nevada Judgment, that is final and conclusive as to the subject matter, which is, the debt owing by the Defendant to the Plaintiff. Therefore, the Second Judgment, which is a subsequent judgment on the same subject matter as the Nevada Judgment (although it is not a competing incompatible judgment) should be disregarded. It therefore follows that for the purposes of determining when the Plaintiff's cause of action arose, it is the Nevada Judgment which is relevant and not, as the Plaintiff contends, the Second Judgment.

31. The Defendant further submits that the Plaintiff's cause of action arose with the entry of the Nevada Judgment on 29 March 1999 and not with the Second Judgment. It therefore follows that the first judgment in time, namely, the Nevada Judgment should be regarded for all intents and purposes to be the final and conclusive judgment on the subject matter. The Nevada Judgment created the implied contract by the Defendant to pay the judgment sum to the Plaintiff, not the Second Judgment. The Nevada Judgment (as is the First Judgment) is clearly over six years old and the Plaintiff's action herein is accordingly time-barred.

88 The defendant relied on the Court of Appeal decision in *Murakami* in support of the proposition that the nature and effect of the Second Judgment should be construed in accordance with Singapore law as if the Second Judgment was hypothetically a judgment of the Singapore court and hence, its true nature, intent, purpose and legal effect in accordance with Californian law was totally irrelevant. In *Murakami*'s case, the first respondent sought to enforce a judgment issued by the Supreme Court of Indonesia ("Judgment 203") in the first respondent's counterclaim made only on **4 July 2006** against the appellant. It was argued by the appellant that Judgment 203 (delivered on **23 February 2000** and not registrable under the REFJA) was a judgment *in personam* and therefore an action on it was subject to a six-year limitation period under s 6(1)(a) of the LA. Since more than six years had passed, the first respondent's counterclaim (which was, for all intents and purposes, an action on a debt) was time barred. The trial judge found that the judgment was a judgment *in rem* and therefore not subject to any limitation period. The Court of Appeal found that the trial judge erred and held that Judgment 203, which was an order obtained in ancillary proceedings declaring the interests of the parties to the matrimonial assets, bound only the parties personally and was therefore was not a judgment *in rem* but *in personam*. In examining whether Judgment 203 was a judgment *in personam* or a judgment *in rem*, counsel for the defendant submitted that the Court of Appeal had, in the following passages, clearly applied the *lex fori*:

"**Is Judgment 203 a judgment *in personam* or *in rem*?**

30 In our view, in order to determine whether Judgment 203 is a judgment *in personam* or a judgment *in rem*, it is necessary to consider the nature of the judicial proceedings that led to Judgment 203 **and the intention of the Supreme Court of Indonesia as to the effect of the order on the parties to the proceedings.** In this connection, **it is not relevant to this court whether Indonesian law recognises the concepts of a judgment *in rem* and a judgment *in personam*. What is relevant to this court is the substance of Judgment 203 and its effect or intended effect on the parties thereto.**

31 Judgment 203 was made pursuant to divorce proceedings between the testator (the executrix of whose estate is the appellant) and the first respondent in which the testator sought a judgment of the Indonesian courts as to the respective rights of the parties to the matrimonial assets. In this context, we are of the view that Judgment 203 merely declared the respective rights of the parties. The judgment also ordered the first respondent to transfer one-half of the assets to the appellant as executrix of the testator's estate, but in our view that did not amount to a disposal of the assets so as to constitute it a judgment *in rem.*" (emphasis added)

89 An action for enforcement upon the Indonesian Judgment 203 *in personam* was subject to the 6 years time bar under s 6(1)(a) of the LA. The Court of Appeal held that a court in Singapore would not allow a judgment *in personam* to be sued as a debt or a cause of action that was time barred under Singapore law. But by virtue of certain paragraphs in the appellant's statement of claim dated 29 April 2005 which had the effect of acknowledging the first respondent's rights to the one-half share of the properties, s 26(1) of the LA extended the period of limitation with respect to the counterclaim as it provided that the "right shall be deemed to have accrued on the date of the acknowledgment". The Court of Appeal concluded that the acknowledgement of the first respondent's counterclaim as early as 29 April 2005 extended the limitation period for reliance on Judgment 203 from that date.

Choice of law

90 I noted that the Court of Appeal in *Murakami* had found it necessary to consider "the intention of the Supreme Court of Indonesia as to the effect of the order on the parties to the proceedings". Further, the Court of Appeal observed that what was relevant was the "intended effect" of Judgment 203 on the parties. How would the court consider the intention of the Supreme Court of Indonesia (and the "effect or intended effect" of the judgment on the parties) if the Singapore court were to disregard completely the laws of Indonesia on the effect of judgments emanating from the Supreme Court of Indonesia? Clearly the courts in Indonesia would have to intend the effect of its own orders in accordance with what the laws of Indonesia would declare to be the effect of Indonesian court judgments. Surely, Indonesian courts would have to issue judgments that would have the same legal effect as prescribed by the laws of Indonesia and not otherwise. I could not imagine that the Supreme Court of Indonesia would have intended the effect of its order on the parties to the proceedings to be at variance with what the laws of Indonesia would have to say on the effect of Indonesian court judgments. The Court of Appeal never went so far as to state that the laws of Indonesia were entirely irrelevant when determining the factual question of the intention of the Supreme Court of Indonesia as to the effect (or its intended effect) of its own orders. The Court of Appeal only said that ***it was not relevant to this court whether Indonesian law recognised the concepts of a judgment in rem and a judgment in personam***. If Indonesian law were in fact to recognise the difference in the concept of a *judgment in rem* and that *in personam*, did it mean that the Singapore court would not even consider what Indonesian law had to say on the effect of an Indonesian court's *judgment in personam* or a *judgment in rem*? If under Indonesian law a judgment was simply a judgment with no distinction made between an *in rem* or *in personam* judgment, then it would have merely meant that Indonesian law was of no assistance whatsoever in helping the Singapore court to determine that issue. I believed it was in that sense that the Court of Appeal stated that Indonesian law was not relevant. That being the case, the Singapore court would have to examine the primary facts and the other available evidence before making a finding of fact whether the Indonesian judgment amounted to a *judgment in rem* or *in personam*, without any further assistance of Indonesian law. The distinction between the two types of judgment was crucial under Singapore law to enable the court in Singapore to decide whether the counterclaim of the 1st respondent as it originally stood (without the extension of the time bar by appellant's acknowledgement of the 1st respondents rights under the Indonesian Judgment 203) was time barred under s 6(1)(a) of the LA for a *judgment in personam* or was not time barred because it was a *judgment in rem*, for which there was no time bar under the LA.

91 Accordingly, *Murakami's* case did not support the defendant's contention that the laws of California were irrelevant when the Singapore court had to determine whether or not the nature and effect of the Second Judgment created a fresh cause of action upon which the plaintiff could mount an action to enforce the Second Judgment, which cause of action then accrued on the date of

issuance of the Second Judgment.

92 Counsel for the plaintiff rightly pointed out that the traditional common law rule on the choice of law for limitation was that, in so far as limitation provisions merely barred remedies, such provisions were procedural in nature and therefore applied only to the extent that they were rules of the *lex fori* (as opposed to *lex causae*): see 2-040; 7-045 – 7-048, *Dicey, Morris & Collins, The Conflict of Laws*, 14th Edn. (2006). However this common law rule had been doubted in Australian and Canadian decisions: *John Pfeiffer Pty Ltd v Rogerson* (2000) 203 CLR 503**;** *Tolofsen v Jensen* [1994] 3 SCR 1022. The editors of *Dicey & Morris* also rejected its validity: see paras 2-042 – 2-045.

93 I agreed with the submission of counsel for the plaintiff that a common law action to enforce a foreign judgment would proceed *'on the basis of an implied contract by the judgment debtor'.* Given the orthodoxy of this latter conclusion, the plaintiff's cause of action was founded on a breach of an implied contract that was entered into at the time of the Second Judgment. It followed that the plaintiff's action was not a common law action upon a Singapore judgment, but was in fact a cause of action occasioned by a breach of an implied "contract" made in California to pay on the Second Judgment debt.

94 It was therefore important to distinguish between the determination of the true character and the substantive nature of the bundle of rights arising from the Second Judgment as a question of fact on the one hand and the application of the LA for the purposes of limitation on the other. In my judgment, Californian law applied to the former, even if the court was going to apply Singapore law on limitation. The construction of a foreign Second Judgment must be a substantive question of the relevant foreign law (Californian law) first determined as a fact; the *lex fori* (Singapore law) would be applicable only to the question of the effect to be given to that fact as found for the purpose of limitation under the LA: see *Castrique v Imrie* (1870) LR 4 HL 414 at 427 *per* Blackburn J; at 443 *per* Lord Hatherley LC.

95 Spencer Bower, Turner and Handley, The Doctrine of Res Judicata, 3rd Edn. (1996), stated the following at pp. 38-39:

> **Foreign law a question of fact**
>
> 73 Questions of foreign law are questions of fact. …The following have been held to be issues of fact: any question as to whether the foreign decision is a judicial decision, whether there was jurisdiction under the *lex fori* to pronounce it; as to the effect of a foreign decision, whether it is regarded by the law of the foreign state as *in rem* or *in personam*, final or interlocutory, civil or criminal; or as to the effect of an adjudication of personal disability; or as to whether the judgment operates by foreign law against the person, or the estate only, of the judgment debtor; as to how far the decision of one state in a federation is recognised in another; as to the effect of a foreign decision on domicile; as to the prerequisites of a divorce in the foreign state; any question as to the practice and procedure of the foreign tribunal, with reference to such matters as service, evidence, or conditional appearance in an action; and any question as to the grounds on which the foreign decision was based. Such issues must be established by appropriate evidence, which, in the case of foreign law, will generally be the testimony of experts in actual practice, not the treatises of jurists, except as expounded by such experts.
>
> **Actions on judicial decisions**
>
> 75 The conclusiveness of a judgment, English **or foreign**, when sued upon is a manifestation of *res judicata* estoppel. …The original cause of action having **merged** in the judgment, *transit in*

rem judicatam; no question of merit is left for inquiry. (Emphasis added.)

96 In my view, the *Murakami* decision was consistent with the above principles and in line with those in *Castrique,* where the English House of Lords was concerned precisely with the question of whether a foreign judgment had been *in rem*. Further, the concept that the original cause of action would be regarded as merged in the judgment with no question of merit left for inquiry also supported the proposition that the court in Singapore should not examine what was the underlying cause of action or basis that gave rise to the Second Judgment, and should not refuse enforcement as a matter of public policy if it was found to be a foreign judgment obtained on an action on a foreign gambling debt.

97 If I was wrong in my reading of the Court of Appeal decision in *Murakami* and even if the Court of Appeal did apply the *lex fori* to determine whether a foreign judgment was a judgment *in rem* or *in personam*, it could not be interpreted as having decided that the *lex fori* determined the prior issue of the true substance and nature of the foreign proceedings and the foreign judgment. The Court rather held specifically that it made no difference whether Indonesian law recognised the distinction between the categories of judgment. The Court was concerned to establish:

> *"the nature of the judicial proceedings that led to Judgment 203 and the intention of the Supreme Court of Indonesia as to the effect of the order on the parties to the proceedings."*[30]

98 As explained earlier, it was difficult to see how the question on what would be the intention of the Supreme Court of Indonesia on the true nature and legal effect of its judgments and orders could be other than a question of Indonesian law given that the intended legal effect of judgments and orders of the Supreme Court of Indonesia would have to be prescribed by Indonesian law.

99 In my judgment, the proper approach would be for the court to examine the nature and legal effect of the Second Judgment in accordance with Californian law and, after having come to a conclusion as to its true nature and legal effect as a finding of fact (with the assistance of expert evidence on Californian law if available), ascertain the relevant time bar for the plaintiff's action upon the Second Judgment under Singapore law. It must be noted that the cause of action pleaded in the plaintiff's writ was never based on the non-satisfaction by the defendant of the judgment debt created by either the Nevada Judgment or the First Judgment. The plaintiff's statement of claim was based only on the non-satisfaction of the judgment debt created by the Second Judgment.

100 I would now turn to the available expert evidence before me on what was the true nature and legal effect of the Second Judgment under Californian law. Clearly, this was an area which was outside the experience and knowledge of the court and the opinion of an expert on Californian Law would be needed to assist the court.

Expert affidavit evidence adduced by the plaintiff on the laws of California in relation to the effect of the Second Judgment

101 The plaintiff produced expert affidavit evidence of a US lawyer, James Arlen Stearman, to state that under the laws of California, the Second Judgment was a fresh judgment creating a new obligation. Paragraphs 13.0 to 21.0 of Stearman's 2nd Affidavit stated, *inter alia*, that:

> (a) The effect of the Second Judgment (under California law) was to create a fresh judgment which imposed an obligation on the defendant to pay the sums specified in that judgment independent and irrespective of any proceedings in the State of Nevada and independent of any judgments obtained previous thereto.

(b) The right to maintain a separate action on a California judgment was long recognised in the State of California according to the California Supreme Court case of *Thomas v. Thomas* (1939) 14 CA2d 355, 358. When a judgment was rendered in an action on a prior judgment, such as the Second Judgment with respect to the First Judgment, the California courts would regard the Second Judgment, in effect, as an extension of the First Judgment. See *Provisor v. Nelson* (1965) 234 CA2d Supp. 876, 880.

(c) The fact that the Nevada Judgment had "expired" would not affect the enforceability of the Second Judgment. The dicta in *Weir v Corbett* (1964) 229 CA2d 290 demonstrated that a California judgment based on a sister-state judgment had a continued and separate life of its own that could still be enforced even if the sister-state judgment had expired.

(d) The Second Judgment was valid for 10 years pursuant to section 683.020 of the California Code of Civil Procedure and an action brought to enforce a judgment may be "commenced in California" within 10 years of entry of the judgment (being 9 November 2001). A judgment creditor would be entitled as a matter of right to a judgment on the original judgment provided the second action was commenced within the statute of limitations (i.e. 10 years). See *United States Capital Corporation v. Nickelberry* (1981) 120 CA3d 864. Hence, bringing an action on a judgment before the period of limitations had expired would have the effect of extending the first judgment and also any lien that might be incident to it.

(e) The Second Judgment was therefore a stand alone judgment independent of any proceedings in Nevada, and the award against the defendant of US$2,453,126.3 with post-judgment interest at the statutory rate of 10% p.a. from 2 June 1999 could be enforced as part of the Second Judgment.

102 The points canvassed by Stearman essentially related to that of enforcement in the jurisdiction in which the judgment was obtained - this was clear from the wording of section 683.020 of the California Code of Civil Procedure cited by Stearman. Californian cases were cited by Stearman in support of his expert opinion that under the law of California, the Second Judgment was a "fresh" judgment independent of any judgments obtained previous thereto.

103 In my opinion, whether the Second Judgment created a new obligation was a matter that had to be decided based on Californian law as a question of fact (and not Singapore law) in the same way that the other effects of a foreign judgment whether it was final or interlocutory, or civil or criminal in nature should be determined on the basis of the relevant foreign law as a question of fact.

104 As a matter of Californian law therefore, I decided as a question of fact on the basis of the expert evidence available before me that the Second Judgment obtained in the State of California was a fresh judgment which imposed an obligation on the defendant to pay the sums specified in that Second Judgment independent and irrespective of any previous proceedings in the State of Nevada and independent of any judgments obtained previous thereto. Separately, and as a matter of the substantive law of limitation in accordance with the law of Singapore under the LA, that independent and "fresh" Second Judgment was enforceable in Singapore by way of a fresh action upon that Second Judgment by the plaintiff, which action was brought well within the limitation period of 6 years from the date of the Second Judgment and hence the action upon the Second Judgment was not time barred in Singapore under section 6(1)(a) of the LA.

105 Even as a matter of English law, it was well established that it was possible, and not an abuse of process in itself, to prolong the expiry of a limitation period pertaining to an action upon a judgment by seeking a second judgment in an action upon the former within the prescribed period of limitation:

ED & F Man (Sugar) Ltd v Yani Haryanto, CA (unreported, 17 July 1996 The Times Law Reports 491); *Bennett v Bank of Scotland* [2004] EWCA Civ 988. It would therefore appear that bringing a second action in this way was a matter of right, subject only to the court's discretion to decline to give judgment in the second action if it regarded it as an abuse of process (with the burden resting on the defendant to show that it was an abuse of process): Report of the Law Reform Committee on the Review of Limitation Act (Cap 163) of the Singapore Academy of Law at [183]. Whilst both cases above were concerned with successive judgments in the same jurisdiction, Professor Briggs in his *Civil Jurisdiction and Judgments*, 4th Edn. (2005), para 7.57 said:

> In an extreme case, for example where the judgment debtor has been unusually successful in concealing his assets outside the jurisdiction of the court, the judgment creditor may even seek another judgment, by way of entitling him to enforce the earlier judgment, so as to pave the way to enforcing an English judgment against assets overseas. where 'It has been held that such a "judgment on a judgment" may be obtained where the first judgment was obtained under Section 26 of the Arbitration Act 1950 to make enforceable an arbitration award; **there is no reason in principle why the same approach could not be taken to a foreign judgment if there were good reasons for requiring a new English judgment for the purposes of possible enforcement.**'(emphasis added)

106 If the AR was right to treat the accrual of the plaintiff's cause of action as having taken place not at the time of the Second Judgment but at the time of the Nevada or First Judgment, it would be difficult to see in what circumstances it would be possible to resurrect a judgment for limitation purposes as anticipated by the English Court of Appeal. It followed that as a matter of the Singapore law of limitation, the plaintiff's cause of action accrued at the time of the Second Judgment and not on any earlier time. Accordingly, for the reasons I had given, the time bar under s 6(1)(a) of the LA of 6 years for the enforcement of the Second Judgment in Singapore had not yet set in because the fresh action in Singapore upon the Second Judgment was taken well within 6 years of the date of the Second Judgment.

Effect of the absence of contrary expert evidence on Californian law

107 The defendant failed to produce any expert evidence to contradict what the expert on Californian law had said in his affidavit on behalf of the plaintiff in relation to the nature and effect of the Second Judgment under Californian law. According to counsel for the defendant, the defendant lacked funds to obtain an expert opinion from a Californian lawyer on this issue. The defendant merely contended that Stearman was not independent as he was the plaintiff's attorney in the California proceedings. I did not think the mere fact of his association with the plaintiff in those California proceedings would preclude him from rendering an expert opinion on Californian law before this court.

108 When the defendant themselves produced no expert evidence on Californian law to support his case that it was not a fresh judgment and that it did not create any new obligation, all I was left with was Stearman's opinion, and even if I were to treat the expert evidence with come circumspection and care because he was not "independent" and might not be entirely objective in his opinion, it would still have remained unchallenged, and I would have little choice but to accept largely what Stearman had opined as being the correct and true position under Californian law, following the approach set out by the Court of Appeal decision in the case of *Saeng-Un Udom v Public Prosecutor* [2001] 3 SLR 1, which was instructive on how the court ought to treat the evidence of an expert in the absence of contrary expert evidence. The Court of Appeal said:

> 26 The duties of a judge in dealing with expert opinion are succinctly stated in 10 *Halsbury's Laws of Singapore* (2000) [120. 257]:

> As to reception of the evidence, the court may, if there is no definite expert evidence to the contrary, agree with the expert (*Official Administrator Federated Malay States v State of Selangor* [1939] MLJ 226) but it must not blindly accept the evidence merely because there is no definite opinion to the contrary (*Re Choo Eng Choon, decd* (1908) 12 SSLR 120). Apart, however, from that duty, the duty of the court is largely negative. Ex hypothesi, the evidence is outside the learning of the court. Therefore, the role of the court is restricted to electing or choosing between conflicting expert evidence or accepting or rejecting the proffered expert evidence, though none else is offered (*Muhammad Jefrry bin Safii v PP* [1997] 1 SLR 197). *The court should not, when confronted with expert evidence which is unopposed and appears not to be obviously lacking in defensibility, reject it nevertheless and prefer to draw its own inferences. While the court is not obliged to accept expert evidence by reason only that it is unchallenged* (*Sek Kim Wah v PP* [1987] SLR 107), *if the court finds that the evidence is based on sound grounds and supported by the basic facts, it can do little else than to accept the evidence*. [emphasis is added]
>
> 27 In this case, it certainly cannot be said that Dr Lau's opinion was "obviously lacking in defensibility". In our opinion, his evidence was based on sound grounds and supported by the basic facts. In the face of such evidence, the judge, with respect, was not entitled to venture his own opinion on a matter which was clearly "outside the learning of the court". In our judgment, in this case, he was not entitled to reject Dr Lau's opinion and substitute it with one of his own.

109 However, it did not mean that the court should close its mind and slavishly accept the uncontradicted evidence of an expert. The court would still have to closely scrutinise the expert's evidence for the reasons stated by VK Rajah JA in *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR 983 at [76]:

> 76 What is axiomatic is that a judge is not entitled to substitute his own views for those of an uncontradicted expert's: *Saeng-Un Udom v PP* [2001] 3 SLR 1. Be that as it may, a court must not on the other hand unquestioningly accept unchallenged evidence. Evidence must invariably be sifted, weighed and evaluated in the context of the factual matrix and in particular, the objective facts. An expert's opinion "should not fly in the face of proven extrinsic facts relevant to the matter" per Yong Pung How CJ in *Dr Khoo James v Gunapathy d/o Muniandy* [2002] 2 SLR 414 at [65]. In reality, substantially the same rules apply to the evaluation of expert testimony as they would to other categories of witness testimony. Content credibility, evidence of partiality, coherence and a need to analyse the evidence in the context of established facts remain vital considerations; demeanour, however, more often than not recedes into the background as a yardstick.

110 After carefully examining the evidence of Stearman, I did not find that his opinion was "obviously lacking in defensibility" or that his opinion was not sufficiently supported by appropriate case law from the Californian courts. With simply no other evidence to contradict the evidence of Stearman, I therefore found as a fact on a balance of probability that the Second Judgment created a new and fresh obligation under Californian law. Hence, this new judgment debt or payment obligation arising out of this Second Judgment accrued not on some previous date but on the date the Second Judgment was issued.

111 If both parties had not produced any expert evidence (which was not the case here), then the court would be compelled to assume as a fact that Californian law was the same as Singapore law and then apply Californian law as if it were the same as Singapore law. But that would still not be applying Singapore law in a strict sense and the principle of having to decide the fact based on

Californian law would remain intact.

112 Hence, even if counsel for the defendant were right (which I did not think he was) that the plaintiff's expert evidence on Californian law should be disregarded completely because he was not an independent expert, I would still not depart from my earlier factual finding at [110]. Assuming Californian law to be the same as Singapore law (in the absence of any expert evidence from either party), the true nature and effect of the Second Judgment under Singapore law (applied as if it was Californian law) would in my view not be different from the English position taken in *ED & F Man (Sugar) Ltd v Yani Haryanto*, where the party was not precluded from prolonging the expiry of a limitation period pertaining to a judgment by seeking a second judgment (that was itself final, conclusive and enforceable at common law) in an action upon the former within the prescribed period of limitation, and the outstanding judgment debt under a second judgment therefore constituted an independent and fresh cause of action. The action upon the Second Judgment would still not be time barred under the LA even if I were to discard the expert evidence of Stearman on account of his lack of independence.

Conclusion

113 For the reasons stated above, I allowed the appeals and set aside the AR's orders. Accordingly, I granted summary judgment for plaintiff and fixed the costs of the appeal and that of the hearing below at $15,000 plus further costs of reasonable disbursements to be paid by the defendant to the plaintiff.