

Chua Kwee Sin v Venerable Sek Meow Di (Tang Kheng Tiong, third party)  
[2013] SGHC 265

**Case Number** : Suit No 3 of 2011  
**Decision Date** : 29 November 2013  
**Tribunal/Court** : High Court  
**Coram** : Tay Yong Kwang J  
**Counsel Name(s)** : Terence Hua and Lee Wei Fan (Anthony Law Corporation) for the plaintiff; Kasi Ramalingam (Raj Kumar & Rama) for the defendant; Zaminder Singh Gill (Hillborne Law LLC) for the third party.  
**Parties** : Chua Kwee Sin — Venerable Sek Meow Di (Tang Kheng Tiong, third party)

*Contract – Collateral Contracts*

*Tort – Misrepresentation – Fraud and Deceit*

*Restitution – Unjust Enrichment*

29 November 2013

**Tay Yong Kwang J:**

1 This was a dispute pertaining to a USD 1m investment in a casino business. The plaintiff claimed that he was entitled to a return of the USD 1m investment sum from the defendant. The defendant denied that he was liable to the plaintiff for the investment sum. He brought the third party into this action by serving a third party notice on him, claiming an indemnity against the plaintiff's claim. He alleged that the third party was the beneficiary of the investment sum which the third party had received from the plaintiff through the defendant.

2 I dismissed the plaintiff's claim. The plaintiff has appealed and I now give the reasons for my decision.

**The Pleadings**

3 The plaintiff pleaded that in October 2009, the defendant approached him with a business proposal to open a casino in Cambodia. The plaintiff agreed with the defendant to venture into the said business. Pursuant to the defendant's assurances, representations and request, the plaintiff forwarded a total sum of \$1,394,860.00 (in cash in USD and S\$ and by way of several S\$ cheques) to the defendant for the purpose of opening the said casino, with the plaintiff as a major shareholder. However the defendant did not proceed to open the casino as assured and represented and failed, neglected and/or refused to return the investment sum to the plaintiff. The defendant therefore wrongfully retained the said sum. If it had not been for the misrepresentations made by the defendant to the plaintiff, the plaintiff would not have forwarded the said sum to the defendant. The defendant intentionally deceived the plaintiff into paying the said sum.

4 The defendant averred that it was the third party which had proposed to the plaintiff a joint venture or partnership in a casino project in Cambodia. The defendant is a Buddhist Abbot with no knowledge of gambling or the running of a casino. The plaintiff was well-acquainted with the third

party and they had known each other for over ten years. The defendant alleged that the present action was a conspiracy between the plaintiff and the third party to wrongfully accuse the defendant of something he had not done or to tarnish his reputation and to cause him economic loss. The defendant denied that he had taken and kept any sums from the plaintiff for his personal use or purpose. The third party was the ultimate beneficiary or recipient of the investment sum. The plaintiff would have known that any monies that the defendant received were ultimately received and collected by the third party for the casino venture or partnership between the plaintiff and the third party. It was the third party who had manipulated, convinced and/or otherwise represented to the plaintiff that the third party would be opening a casino or a junket casino operation in Cambodia and that the plaintiff relied on those representations in parting with the monies. In this regard, the defendant also avers that he was also a victim of the third party's fraud.

5 The defendant also averred that the plaintiff and the third party had executed a partnership agreement on 2 November 2009 for the plaintiff to invest in and operate a junket casino operation in Cambodia. The plaintiff was to invest USD 1m which was the equivalent of the investment sum in question. The defendant was not a party to this agreement. The third party received the investment sum and confirmed that in writing. Accordingly, it was the third party who was the person accountable to the plaintiff.

6 There was originally a counterclaim in defamation in respect of the plaintiff's solicitors' letter of demand dated 30 December 2010. During the course of the trial, the defendant withdrew the counterclaim after I had suggested to his solicitor that we should focus on the plaintiff's claim and not have the trial prolonged by this side issue.

7 The third party pleaded that he was introduced to the defendant when he wanted to seek blessings for himself and his business. He was asked by the defendant to help prepare an agreement for the casino operation between the plaintiff and the defendant. The third party was also asked to act as a manager in the initial set-up and was promised that he would have a role in the casino operations once it was up and running. The third party acted as he did as he believed the defendant was his spiritual advisor and trusted him wholeheartedly.

8 The third party also averred that the defendant had sought other investors to put money into other casino-type operations. The defendant had also sought the third party's assistance for these operations and monies were handed directly to the defendant. The third party neither received reimbursement nor payment for these operations.

9 The casino was the defendant's brainchild. All discussions were between the defendant and the plaintiff with the third party excluded until the defendant asked him to prepare the business agreement. The third party did not receive any money from the plaintiff. During the periods that the money was allegedly handed over by the plaintiff, the third party was in Cambodia. The third party issued and signed two receipts for the investment sum at the defendant's request and sent them over from Vietnam as he was then stationed there. He assisted in issuing the receipts because he was promised a viable business investment. He was only an assistant to the defendant. He received nothing from the plaintiff or the defendant. Whatever representations and assurances he had made were truthful and to the best of his knowledge.

## **Background**

10 The plaintiff has been a businessman for more than 20 years. The defendant is a Buddhist monk and was the head of a temple located at No 25 Lorong 27 Geylang ("the Temple"). The third party was the Chief Executive Officer and substantial owner of the Golden Empire Group, which since June

2009 had engaged in live online casino operations in Cambodia and Vietnam.

11 The plaintiff was interested in lion dance. He was introduced to the defendant on account of the defendant's prominence in the lion dance community. Sometime in September 2009, the plaintiff and his friends visited the defendant at the Temple to have their fortunes told. The defendant told the plaintiff and his friends that it was not propitious to enter the oil business and suggested that the plaintiff enter the casino business instead.

12 The third party was introduced to the defendant sometime in mid-2009 by one Tony Au Kam Fai ("Tony Au"), a disciple of the defendant working as a computer consultant in the third party's casino business at the material time. The third party wanted to seek blessings for himself and his casino business. The third party's office was situated in Vietnam, while his casino was located in Cambodia.

13 The plaintiff and the third party first met through business dealings in the Philippines sometime between 2003 and 2005. They met again at the Temple sometime in mid-2009. The plaintiff was then in the midst of making a Chinese movie about gambling and was looking for a suitable location to film casino scenes. The third party offered the use of his casino and was given a minor role in the movie in return. The movie was released in February 2010.

14 The three parties and their respective witnesses gave differing versions of the material events surrounding the casino investment. All parties were however in agreement that the plaintiff had handed over to the defendant USD 350,000 in cash on 5 November 2009, USD 500,000 in cash on 9 November 2009, S\$100,000 in cash on 16 November 2009 and S\$110,000 in various cheques dated 16 November 2009.

15 It was also not disputed that the plaintiff and the third party entered into a written contract entitled "LIMITED PARTNERSHIP AGREEMENT GOLDEN EMPIRE JUNKET" on 2 November 2009 in Vietnam. This was a 25-page document with many clauses. Their signatures were witnessed by Chua Tian Siong ("Chua"), one of the plaintiff's witnesses at the trial and Helen Tran, a lawyer working for the third party who was not called as a witness. The material terms of this agreement were:

THIS LIMITED PARTNERSHIP AGREEMENT (this "**Partnership Agreement**") is made the 2nd day of November 2009 by and among [the third party] (the "General Partner") and [the plaintiff] (the "Initial Limited Partner"), who are identified on and have executed the signature pages to this Partnership Agreement.

#### RECITAL

The General Partner and the Initial Limited Partner(s) wish to enter into and form a limited partnership (the "Partnership") under the law of British Virgin Islands ("BVI") to operate the junket casino operation in Las Vegas Sun Casino in Cambodia in accordance with the terms of this Partnership Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, it is agreed that:

...

#### 5. *Term*

This Partnership is an "at-will" partnership that does not have a definite term.

## 6. *Partners; Contributions.*

...

### (b) *Capital Contributions.*

The total invested Capital of the Partnership is US\$10,000,000 (ten million US dollars), of which the Initial Limited Partner shall contribute US\$1,000,000 (one million US dollars) in cash, representing 10% of the Partnership.

Concurrently with the execution and delivery of this Partnership Agreement, the Initial Limited Partner shall make its initial Capital Contribution of US\$350,000 (three hundred fifty thousand US dollars) in cash to the Partnership.

The remaining Capital Contributions by the Partners shall be made upon registering this Partnership Agreement or establishing a company in BVI.

...

## 9. *Distributions of Cash Proceeds*

The Cash Proceeds of the Partnership for each calendar year shall, after payment of all Partnership expenses, be distributed to the Partners in accordance with their respective Percentage Interests.

...

## 18. *General and Miscellaneous Matters.*

...

### (b) *Limitation to Withdraw Capital Contribution.*

Limited Partner shall only have the right to demand or receive the return of its Capital Contribution to the Partnership after 3 months from the date of making its full Capital Contribution. The Partnership shall arrange the payment for the concerned Limited Partner's Capital Contribution based on the market price of its share within 30 days from the date of receipt of the written request by the Limited Partner.

...

16 On 19 November 2009, a company known as Golden Empire Services Limited was incorporated under the British Virgin Islands' ("BVI") Business Companies Act 2004 listing the plaintiff and the third party as its directors and shareholders holding 9,000 and 1,000 shares of USD 100 each respectively. On that day, the plaintiff and the third party signed several documents including a letter of consent to act as director and a request for allotment of shares.

17 It was also not disputed that the third party issued two receipts although the evidence relating to the circumstances surrounding them differed. The first receipt stated:

### **Receipt of US\$350,000 from Mr Tony Au**

Date: 1<sup>st</sup> Nov 2009

This is to confirm that US\$350,000 was handled to [the third party] on the 1<sup>st</sup> Nov 2009 from [Tony Au] in HCM Vietnam.

This money was handled to Mr Tony Au by [the plaintiff] to to be handed to [the third party] for the purpose of marketing investment.

The second receipt was as follows:

**Golden Empire Services Limited**

Date: 12<sup>th</sup> Dec 2009

**Re: Receipt of US\$650,000 from Mr Chua Kwee Sin**

This is to confirm on the 12<sup>th</sup> Dec 2009, US\$650,000 was received by [the third party] from [the defendant], which the money is from [the plaintiff] for the purpose of marketing investment.

**The plaintiff's evidence**

18 During a fortune-telling session, the defendant encouraged the plaintiff and his friends to consider entering the casino business. The defendant assured the plaintiff and his friends that the casino business was definitely safe, as the defendant's men would be running the casino. The defendant further represented that the "top man" of the casino would be under the defendant's control.

19 The defendant said that the plaintiff was to invest at least USD 1m which was to be received and managed by the defendant personally. They were to start a business in Cambodia where premises would be secured for customers to gamble. The defendant said that the casino was "sure to make money" and that if it did not, the defendant promised that he would personally return the money to the plaintiff after three months. The defendant promised the plaintiff that the investment would definitely be safe. The third party was not present at the time these promises were made.

20 The plaintiff averred that he was swayed by the defendant's apparent sincerity and conviction and his standing in the Buddhist community. The plaintiff and the defendant therefore orally agreed to the opening of the Cambodian casino ("the plaintiff-defendant agreement"). The plaintiff also informed the defendant that, on a personal basis, he would donate ten per cent of his total profits to the Temple as a way of showing gratitude.

21 The defendant subsequently made arrangements for the plaintiff to attend at a lawyer's office in Singapore sometime in November 2009. The plaintiff's friend, Chua was with him. The defendant did not attend. The third party was present instead. The defendant had asked the plaintiff and the third party to endorse an agreement to facilitate the casino business. The plaintiff did not understand why this was being done. The plaintiff averred that this written agreement was not the plaintiff-defendant agreement. At the hearing, the plaintiff changed this aspect of his evidence. The plaintiff said that he did not get back to the defendant immediately about the casino. After some time, the defendant invited the plaintiff to visit a casino in Cambodia. The defendant made all the arrangements and provided for everything. Chua accompanied the plaintiff. They were flown first to Vietnam and then driven across the border into Cambodia. At the casino, the third party showed the plaintiff around.

The plaintiff decided to invest in the casino upon his return to Singapore. As he was about to make the USD 1m payment, the defendant stopped him. The defendant told the plaintiff that he would not accept the money unless the plaintiff flew back to Vietnam to sign something. The plaintiff therefore flew to Vietnam again with Chua, where he was presented with a document which both the plaintiff and the third party signed (at [15] above). Both he and Chua could not read English. He therefore had no idea what document he had signed.

22 Pursuant to the plaintiff-defendant agreement and at the defendant's request and instructions to this effect, the plaintiff personally handed the defendant a total of S\$1,394,860, comprising the amounts mentioned earlier, at the Temple over several occasions. Sometime in March 2010, the third party handed the plaintiff the two receipts (set out at [17] above).

23 The defendant did not proceed to open the casino as represented to the plaintiff. The plaintiff made various oral inquiries and had also asked for his money back but to no avail.

24 The plaintiff adduced evidence from Chua and Hoo Tee Tuan to corroborate the above. Their evidence was substantially similar to the plaintiff's and added nothing material.

### **The defendant's evidence**

25 The defendant testified that Tony Au was one of his disciples. Tony Au introduced the third party to the defendant because the third party wanted to engage the defendant's services for a *feng shui* (or geomancy) ceremony for a new casino in Cambodia. The third party was, during the same period, actively promoting and seeking investors for his casino business.

26 The plaintiff asked the defendant if he was comfortable if the plaintiff brought USD 1m to the Temple. The money was to be given to the third party to invest in the third party's business in Cambodia. The plaintiff did not discuss the details of his investment with the defendant. Tony Au was present when the money was brought to the Temple. While they were there, Tony Au told the defendant that the third party had called to ask him to bring USD 350,000 in cash to Vietnam on an urgent basis. Tony Au also said that he was going back to Vietnam the next day and asked if the defendant wanted to go along to conduct the *feng shui* ceremony at the Cambodian casino.

27 The defendant, in his affidavit of evidence-in-chief ("AEIC"), initially said that when Tony Au gave the third party the sum of USD 350,000, he asked the third party to issue two receipts, one for USD 350,000 and the other for USD 650,000. The receipt for USD 650,000 was made out in the name of the plaintiff and handed to the defendant so that the defendant could give it to the plaintiff when the defendant returned to Singapore. Before cross-examination, the defendant made corrections to his evidence. When the defendant delivered USD 650,000 to the third party in Vietnam, the defendant asked for a receipt from the third party. The two receipts were subsequently sent to the defendant so that he could give the receipts to the plaintiff.

28 During cross-examination, it was ascertained that the defendant travelled to Taiwan from 17 November to 3 December 2009 for some religious activities. The third party went to meet him in Taiwan. The defendant then travelled to Cambodia from Taiwan from 3 to 5 December 2009 and to Vietnam from 5 to 7 December 2009. For some reason, the third party asked him to carry the cash to Vietnam for him. The defendant testified that he handed over USD 650,000 to the third party sometime between 5 and 7 December 2009.

29 The defendant averred that he had nothing to do with the investment. The signed partnership agreement was between the plaintiff and the third party. When asked why he had a copy of this

agreement, the defendant explained that a copy was passed to him to bless it. The defendant further averred that the plaintiff had no proof that he was the actual recipient of the investment sum. The defendant felt that he was a victim of a set-up by businessmen who realised that their project had gone sour.

30 The defendant asserted that the two amounts of USD were brought in cash to Vietnam packed in backpacks. The cheques had been encashed earlier and the S\$ had been converted into USD. When asked whether he made any declaration to the checkpoint authority in Singapore or elsewhere since he was carrying such a huge amount of cash, the defendant said he was not aware he had to make such a declaration and in any case, no authority questioned him about the cash.

31 The defendant also relied on the evidence of two investors — Lim Soo Joon ("Lim") and Chia Seng Loke ("Chia"). Lim said that he was one of the many investors in the casino project and had invested USD 100,000 in it. Lim and the third party had signed a memorandum of understanding and a partnership agreement. At all material times, the third party was the person who proposed to open the casino and was solely responsible for the casino's day-to-day running. Eventually, the casino project ran into problems and the third party could not deliver on the many promises made to the various investors. The third party fled for fear of reprisal and disappeared for close to a year. In the third party's absence, the project ran out of money and was abandoned.

32 Chia was Lim's friend. He invested a total of USD 300,000 in the casino project. A memorandum of understanding and a partnership agreement were also signed by Chia and the third party. In his opinion, the third party was indisputably the controlling mind and will of the casino project.

33 The defendant also relied on the evidence of Tony Au. In his AEIC, Tony said that he was present when the plaintiff brought USD 1m to the Temple. While he was there, the third party called him and told him to bring USD 350,000 to Vietnam urgently as the money was needed there. He agreed to do it the next day. He made the trip to Vietnam with the defendant.

34 Tony Au initially stated that a money changer took the remaining amount of USD 650,000 to deliver it to the third party. This arrangement was made by the third party. The defendant, though present during the handing over of the money, was not involved in the monetary transaction and did not participate in the handling of the money. When Tony gave the third party the money, he asked for two receipts for USD 350,000 and USD 650,000. This was done for security reasons because he did not want the third party to subsequently deny receipt of the money. One receipt was made out to Tony Au, while the other was in favour of the plaintiff. Tony subsequently gave the receipt in favour of the plaintiff to the defendant as the defendant said that he would give it to the plaintiff when he returned to Singapore. However, during the hearing, Tony retracted the evidence recounted in this paragraph, saying that he was not sure about the evidence as the events happened too long ago. When challenged that his passport entries did not accord with his evidence about his travels, he claimed that he had lost one passport.

### **The third party's version of events**

35 The third party was first introduced to the defendant by Tony Au sometime in mid-2009 because the third party wanted to seek blessings for himself and his casino business. Tony Au claimed that he had a very close relationship with the defendant and that the defendant had very powerful magical and spiritual powers that could make businesses become very successful. When Tony and the third party met the defendant in the Temple, the defendant started talking about the many multi-millionaires he had helped to become successful in the past.

36 A month or two after they met, the defendant proposed to the third party to expand the casino business and grow it into an extremely large corporate business empire by leveraging on his contacts, connections and spiritual and magical powers. The defendant uttered some prayers and threw two red wooden blocks on the floor to divine that the casino business would become very large within one or two years.

37 The defendant told the third party that he would need to follow the defendant's instructions down to the letter for the casino business to become extremely successful and for the third party to become a multi-billionaire. If this was not done the business would fail. The defendant proposed that the third party draft a business agreement and told him that he would introduce investors to the business. The defendant explained that it was very important to get the right investors and that he would tell the third party what to do.

38 Sometime in September or October 2009, the defendant informed the third party that he had found an investor for the Golden Empire Casino. The defendant gave instructions for a business agreement to be drafted and for a BVI company to be set up. In early November 2009, the defendant arranged for the plaintiff to go to a law firm (the name of which the third party is unable to recall) to sign both the business agreement and the documents setting up the BVI company. There were also at least three other investors.

39 The third party did not receive any of the money that the plaintiff and the other investors had given to the defendant. The Golden Empire Casino did not start because the money was not forthcoming. The defendant continued to make the third party believe that he was going to be rich. The defendant also promised him that there was an investment amount of USD 10m coming to the casino from an investor in Taiwan. Sometime in March 2010 when the third party was still in Vietnam, the defendant asked the third party to print out, sign, and post two receipts for USD 350,000 and USD 650,000. At that time, the third party was still following the defendant's every instruction and did not realise that the defendant was trying to cheat the plaintiff of his money. The third party further averred that he had played no part in the present dispute between the plaintiff and the defendant.

### **Issues raised**

40 Accordingly, these issues arise for my consideration:

- (a) Was there an agreement between the plaintiff and the defendant pertaining to a casino business?
- (b) Was there fraudulent misrepresentation on the part of the defendant?
- (c) Is the plaintiff entitled to restitution of the monies advanced to the defendant?

### **Was there an agreement between the plaintiff and the defendant pertaining to a casino business?**

41 The plaintiff initially took the stance that there were two separate agreements — an oral agreement between the plaintiff and the defendant and a written agreement between the plaintiff and the third party.

42 The defendant denied that there was such an oral agreement. Indeed, the plaintiff did not adduce any particulars pertaining to the terms of the purported oral agreement. No evidence was given, either on affidavit or on the stand, about the agreed investment capital, the shareholding or



the share of profits that the plaintiff would have been entitled to.

43 The plaintiff's own evidence is confusing and equivocal in this regard. Certain events followed the purported oral agreement. The plaintiff initially said that the defendant made arrangements for the plaintiff and the third party to sign an agreement at a lawyer's office. Before cross-examination, the plaintiff changed his evidence and took the position that he was about to make a USD 1m payment when the defendant stopped him and told him that he would not accept the money unless the plaintiff flew to Vietnam to sign something. In Vietnam, the plaintiff and third party signed an agreement.

44 Even taking the plaintiff's case at its highest, the evidence simply does not bear out a separate agreement between the plaintiff and the defendant. At the very most, the plaintiff and the defendant came to some sort of amorphous oral understanding which culminated in the signed agreement between the plaintiff and the third party (set out at [15] above). Conspicuously, the defendant was not a party to this agreement. Rather tellingly, the plaintiff abandoned this line of argument in his closing submissions, choosing instead to focus on a restitutionary claim.

45 There was nothing of substance to support the plaintiff's assertions about an agreement between him and the defendant. I therefore held that the alleged oral agreement between the plaintiff and the defendant was not proved.

#### **Was there fraudulent misrepresentation on the part of the defendant?**

46 It was unclear what the exact representations allegedly made to the plaintiff were. The plaintiff initially took the position in pleadings that, contrary to representations made, the casino in Cambodia was never opened. However, the evidence presented at trial was that any investments made would be channelled into a casino that was already operating. This plainly contradicted the plaintiff's pleadings.

47 The plaintiff could have been referring to assurances purportedly made by the defendant to the effect that the casino was a safe investment, that it was sure to make money and that the defendant would personally refund the plaintiff after three months if the casino did not make money. The defendant denied that such assurances were made.

48 However, the signed agreement was ultimately between the plaintiff and the third party. The agreement explicitly provided for a right to demand the return of the plaintiff's capital contribution three months later, with the partnership arranging for payment based on the market price of the plaintiff's share (see clause 18 at [15] above). The plaintiff was thus relying on collateral oral representations dissonant with the written agreement. As an experienced businessman, one would have expected the plaintiff to exercise some care and ensure that the oral representations made by the defendant were documented somewhere, either in the same written agreement or in a separate document signed by both the plaintiff and the defendant.

49 In any case, the plaintiff pleaded that the defendant intentionally deceived him (see [3] above). The plaintiff did not plead negligent or innocent misrepresentation. In *Chua Kwee Chen and others (as Westlake Eating House) and another v Koh Choon Chin* [2006] 3 SLR(R) 469, Andrew Phang J (as he then was) held (at [39]) that:

In summary, the standard of proof in civil proceedings where fraud and/or dishonesty is alleged is the civil standard of proof on a balance of probabilities. However, where such an allegation is made (as in the present proceedings), more evidence is required than would be the situation in an ordinary civil case.

50 There is simply insufficient evidence that the defendant intentionally deceived the plaintiff. Indeed, in a very broad sense, the plaintiff got what he wanted. He got to invest in a casino business operated by the third party, with the agreement explicitly stating that he had a right to exit the investment after three months. If he had wanted the defendant to be personally liable to repay, he ought to have entered into a collateral agreement with the defendant. The plaintiff however did not even allege that there was such an oral collateral agreement, averring instead that he was the victim of fraudulent misrepresentation.

51 I was not able to accept the plaintiff's assertions on this issue. I therefore held that fraudulent misrepresentation on the part of the defendant was not proved.

### **Is the plaintiff entitled to restitution of the monies advanced to the defendant?**

52 The following elements must be satisfied for a claim in unjust enrichment to succeed (see eg *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another appeal* [2011] 3 SLR 540 at [110]):

- (a) the defendant has received a benefit (*ie*, he has been enriched);
- (b) the enrichment is at the plaintiff's expense;
- (c) it is unjust to allow the defendant to retain the enrichment; and
- (d) there are no defences available to the defendant.

53 The defendant must have enriched by the receipt of the monies. The plaintiff said that he handed over the monies personally to the defendant. The defendant said that he passed USD 350,000 to Tony Au, who in turn flew to Vietnam with the defendant to hand the money over to the third party on 5 or 6 November 2009 (as evidenced by the defendant's passport). The defendant also said that he personally handed USD 650,000 to Tony Au at a later date (sometime between 5 and 7 December 2009). The third party denied that he received any of the plaintiff's monies and said that he issued the two receipts at the defendant's request on about 10 March 2010 because he was under the spiritual influence of the defendant and felt that he must comply with everything the defendant said in order to prosper financially.

54 It was beyond dispute that the plaintiff had parted with his money. There was however dispute over whether the money eventually went to the third party, whether through Tony Au or the defendant. This factual inquiry is also determinative legally because the defendant could not be said to have been unjustly enriched if he did not keep the money handed over to him by the plaintiff but did pass it to the third party as arranged. In *Goff & Jones The Law on Unjust Enrichment* (C Mitchell, P Mitchell & S Watterson eds) (Sweet & Maxwell, 8th ed, 2010) at para 4-58, it is stated that:

#### **10. Ministerial Receipt**

A defendant who receives assets in his capacity as an agent may immediately hand them over to his principal, or simply hold them as bailee pending further instructions, and in either case he may derive no personal benefit from the assets. In these circumstances he may be able to escape liability in unjust enrichment on the basis that he received the assets ministerially, and did not receive them for his own use and benefit. ...

Ministerial receipt was also recognised in the High Court case of *Skandinaviska Enskilda Banken AB*

*(Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another suit* [2009] 4 SLR(R) 788 (at [332] – [336]).

55 I acknowledge that the evidence from all parties was unsatisfactory in some aspects. For instance, why was the plaintiff dealing in cash when such a large amount was involved? Why did the plaintiff go to Vietnam with someone who also could not read English to sign a relatively lengthy legal document with the third party and to do so without raising any questions? The defendant's account of how Tony Au and he went to Vietnam by air to hand the money to the third party on two separate occasions also raised several questions:

- (a) Why did Tony Au and the defendant fly to Vietnam to hand over such large amounts in cash instead of using a much safer, faster and more convenient method like telegraphic transfer?
- (b) Why did the defendant fly to Vietnam from Taiwan to hand over the second tranche of money to the third party when he could have done so while they were both in Taiwan earlier?
- (c) Why did the dates on the receipts not correspond with the dates on which Tony Au and the defendant travelled to Cambodia and/or Vietnam?

56 However, at the same time, it was clear that the defendant was not, legally at least, the person who was seeking investment funds for the casino business. The plaintiff and the third party were the persons named as parties to the partnership agreement. There was also evidence from two other investors that they contracted with the third party to invest in the casino business. It was also undisputed that the third party was already operating a casino business before he met the defendant and that he sought out the defendant because he wanted blessings for himself and his casino.

57 The third party was the one who issued the two receipts acknowledging that he had received the two amounts of money from Tony Au and the defendant respectively and that both amounts originated from the plaintiff. According to the third party, the defendant represented to him that he was destined to become a billionaire but only if the third party underwent a ritual and followed every single instruction given by the defendant. The third party said that the ritual was held at the Temple where he knelt in front of the deities for more than an hour a day for seven days while more than ten monks were chanting. After undergoing the ritual, the third party claimed that he treated the defendant as his god. This was why he issued the receipts when asked to do so by the defendant despite the fact that he did not actually receive any of the monies. Moreover, he was anxiously awaiting the USD 10m investment from Taiwan promised by the defendant.

58 In 2009, the third party would be about 40 years old. The business plan for a casino was conceptualized by him. The partnership agreement was prepared by his lawyer in Vietnam and was signed there. The defendant was not present at all. Yet he was alleged to be directing everything from afar somehow. It was hard to believe that the third party, a person with 20 years of experience in gambling and with overseas working experience, would become so submissive to a spiritual leader that he had met only a few months before that he would twice acknowledge receipt of such large amounts of money when in truth he did not receive a single cent. It was more likely that the third party did receive the two amounts of cash for investment in his casino business pursuant to the partnership agreement that he had signed with the plaintiff.

59 Counsel for the plaintiff and for the third party pointed out that it would have been an offence for the defendant and Tony Au to bring those large amounts of money out of Singapore without making any declaration. They also pointed out that the huge bulk of currency packed in backpacks could not have gone undetected at the airport security checks. However, while offences could have

been committed, that did not mean that it was impossible to have taken the money out of Singapore without detection.

60 When considering the totality of the evidence led in court, I was left with the distinct impression that not all the facts had been made known to the court. Nevertheless, on a balance of probabilities, I found that the defendant did pass the plaintiff's money to the third party on the two occasions. The first tranche was passed to the third party via Tony Au while the second tranche was handed over to the third party by the defendant personally. As the defendant did not keep any money for his own use but did pass it to the third party on behalf of the plaintiff, he was not enriched and the plaintiff's claim in unjust enrichment against him must fail.

### **Conclusion and costs**

61 Accordingly, I dismissed the plaintiff's claim in unjust enrichment. There could be no judgment against the third party in the plaintiff's favour as the plaintiff did not make any claim against him. As the plaintiff's claim against the defendant was dismissed, the defendant's claim for an indemnity against the third party became academic and was dismissed on that ground.

62 The plaintiff was ordered to pay the defendant 90% of the costs of the proceedings between the plaintiff and the defendant. The deduction of 10% was to account for the defendant's counterclaim in defamation which was withdrawn during the trial. The plaintiff was ordered to pay the defendant 100% of the defendant's costs for the third party proceedings. The plaintiff was also ordered to pay the third party his costs for defending the third party proceedings.

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