IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 280

Originating Summons No 221 of 2021
(Registrar's Appeal No 276 of 2021)

Between

The Star Entertainment QLD Limited

… *Applicant*

And

Khong Yoong Mark Yong

… *Respondent*

GROUNDS OF DECISION

[Betting, Gaming and Lotteries] — [Transactions abroad]
[Conflict of Laws] — [Foreign Judgments] — [Recognition]

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v
Yong Khong Yoong Mark

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Introduction

1 This case raises, once again, the question whether s 3(2)(*f*) of the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) ("RECJA") bars the registration of a foreign judgment based on a gambling debt. The Court of Appeal held in *Liao Eng Kiat v Burswood Nominees Ltd* [2004] 4 SLR(R) 690 ("*Burswood Nominees*") that it does not. However, a subsequent Court of Appeal commented, in *Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace)* [2010] 1 SLR 1129 ("*Desert Palace*"), that *Burswood Nominees* was wrongly decided.

2 After hearing submissions, I held that I remain bound by *Burswood Nominees* notwithstanding the comments made by the Court of Appeal in *Desert*

Palace, and declined to set aside the registration of an Australian judgment under the RECJA. The judgment debtor has appealed against my decision.

The parties

3 Star Entertainment QLD Limited ("the Judgment Creditor") operates a casino known as "The Star Gold Coast" ("the Casino") in Queensland, Australia, pursuant to a casino licence issued under Queensland's Casino Control Act 1982.

4 Mr Yong Khong Yoong Mark ("the Judgment Debtor") was a customer of the Casino and had incurred certain debts arising from his patronage of the Casino.

Procedural history

5 On 25 September 2020, the Judgment Creditor obtained a default judgment against the Judgment Debtor in the Supreme Court of Queensland for the sum of A$ 3,883,058.28, including A$ 72,053.14 in interest, and A$ 4,228.30 in costs ("the Judgment"). The Judgment Creditor applied *ex parte* for, and obtained the registration of the Judgment in Singapore under the RECJA.

6 The Judgment Debtor filed an application to set aside the registration of the Judgment pursuant to s 3(2)(*f*) of the RECJA. This was dismissed by the learned Assistant Registrar ("the AR") who heard the application. The Judgment Debtor's appeal against the AR's decision was heard before me.

Facts

7 The following facts were undisputed:

(a) The debt underlying the Judgment was incurred pursuant to a cheque cashing facility ("CCF"), whereby the Judgment Creditor handed over a cheque drawn in favour of the Casino in exchange for chips for the purpose of gambling at the Casino. Chips lost by the Judgment Debtor at the gambling tables would have to be made good by the Judgment Debtor. The cheque could be redeemed by the Judgment Debtor within a specified period by way of cash, gambling chips, bank draft or electronic fund transfer. If the cheque was not redeemed within the specified period, the Casino would present the cheque for payment.

(b) The Judgment Debtor was an experienced patron of gambling establishments, including casinos operated by the Judgment Creditor. Specifically, the Judgment Debtor used the Casino's CCF twice in January 2018. He had also used the CCF in the Judgment Creditor's casino in Sydney, Australia on 14 occasions from April 2010 to January 2018. Over this period, the Judgment Debtor had exchanged gambling chips worth a total of A$ 37,871,835.01 in these two casinos. According to a report produced by Central Credit, LLC, a worldwide credit reporting agency specialising in casino operations, the Judgment Debtor had patronized no less than 15 casinos worldwide from 2006 to 2018.

(c) Gambling by the Judgment Debtor at the Casino was not against public policy in Australia. The debt underlying the Judgment was thus valid under the express choice of law of Queensland, Australia, which governed the CCF.

The Judgment Debtor's submissions

8 Section 3(2)(*f*) of the RECJA provides that a foreign judgment shall not be registered 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.

9 The Judgment Debtor submitted that, as the Judgment was for recovery of gambling debts, it was a judgment in respect of a cause of action which, for reasons of public policy, could not have been entertained by a Singapore court. This was because s 5(2) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA") provides that:

> 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.

10 It is settled law that, pursuant to s 5(2) of the CLA, claims for gambling debts could not be entertained by Singapore courts even if such debts were incurred pursuant to gambling activities overseas and wagering contracts governed by foreign law – see *Star Cruise Services Ltd v Overseas Union Bank Ltd* [1999] 2 SLR(R) 183, *Star City Pty Ltd* (*formerly known as Sydney Harbour Casino Pty Ltd*) *v Tan Hong Woon* [2002] 1 SLR(R) 306 and *Star Entertainment QLD Ltd v Wong Yew Choy and another matter* [2020] 5 SLR 1 ("*Star Entertainment*"). Therefore, the combined effect of s 3(2)(*f*) of RECJA and s 5(2) of CLA was that, where the underlying debt was a gambling debt caught by s 5(2) of the CLA, a foreign judgment in respect of such a debt could not be registered under RECJA.

Analysis

11 The difficulty with the Judgment Debtor's submission was that this specific submission had already been previously considered and rejected by the Court of Appeal in *Burswood Nominees*.

12 *Burswood Nominees* similarly involved the registration of an Australian judgment for gambling debts under the RECJA. In fact, like the present case, the underlying debt giving rise to the Australian judgment in *Burswood Nominees* was also a debt incurred pursuant to an Australian casino's CCF (at [3]). The court held that, although the debt arising from the CCF took the form of a loan, it was in substance a claim for money won upon a wager, which would have been caught by s 5(2) of the CLA if the claim had been brought in a Singapore court in the first instance (at [21]–[22]). However, the court went on to hold that, while s 5(2) of the CLA elucidates Singapore's domestic public policy, s 3(2)(*f*) of the RECJA requires a higher threshold of public policy to be met in order for the registration of a foreign judgment to be refused (at [24]). The meeting of this higher threshold of public policy, described by the court as "international" public policy, involves asking whether the domestic public policy in question was so important as to form part of the core of essential principles of justice and morality shared by all nations (at [42]). The court held that the domestic public policy encapsulated in s 5(2) of CLA did not meet this higher threshold (at [42]–[46]). It therefore declined to set aside the registration of the Australian judgment.

13 As already noted (at [1] above), the correctness of *Burswood Nominees* was doubted by a subsequent Court of Appeal in *Desert Palace.* The relevant passages from *Desert Palace* read:

113 *Ex hypothesi*, the statutory public policy expressed in s 5(2) of the CLA is superior to what may be called the "higher" international public policy at common law, *ie*, the "higher standard of public policy in operation when a forum court is faced with a foreign judgment" (see *Burswood Nominees* … at [32]). This is because the higher international public policy is only common law public policy. The position would be different if the court's refusal to enforce a foreign gambling debt, in whatever form or guise that debt takes (including the debt as converted into a foreign judgment), is based on domestic public policy that has no basis in statute; in such circumstances, the court would be entitled to prefer the higher international common law public policy to its domestic common law public policy. But, this is not the case where s 5(2) of the CLA is concerned. In a contest between the higher international public policy at *common law* and *statutory* public policy, the latter *must* prevail. …

114 Turning to s 3(2)(*f*) of the RECJA, this court held in *Burswood Nominees* (at [41]) that "Liao would have to surmount [a] higher public policy threshold in order to prevail upon [the court] to refuse registration of the [WA] [J]udgment on grounds of public policy". In our view, there is no legal basis for reading this requirement into s 3(2)(*f*). This provision expressly states that a Commonwealth judgment shall not be registered 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*" [emphasis added]. These words are absolutely clear. The public policy referred to in s 3(2)(*f*) of the RECJA is the public policy of Singapore, whether it be our common law public policy or our statutory public policy. Section 5(2) of the CLA expresses the public policy which precludes the enforcement of any cause of action based on a gambling debt. In *Burswood Nominees*, the cause of action on which the WA Judgment was based was a gambling debt. No doubt, the gambling debt in question was a valid debt, but s 5(2) of the CLA applies to all gambling debts. Accordingly, the court should have accepted Liao's argument that the WA Judgment could not be registered under s 3(2)(*f*) of the RECJA on the ground that that judgment was based on a cause of action which could not, by virtue of the public policy encapsulated in s 5(2) of the CLA, be maintained in Singapore. In our view, the decision in *Burswood Nominees* is, with respect, unsound and should be reviewed if a similar issue were to come before this court in the future. We might add that, in his commentary on *Burswood Nominees* in "Statute and Public Policy in Private International Law [: Gambling Contracts and Foreign Judgments]" [(2005) 9 SYBIL 133], Prof Yeo Tiong Min was of the view (at 140–146) that the decision was not

> defensible in the light of the express words of s 3(2)(*f*) of the RECJA.
>
> [emphasis in original]

14 Thus, the *Desert Palace* court considered that, in a contest between *statutory* public policy as encapsulated in s 5(2) of the CLA and the higher international public policy *at common law*, the statutory public policy must prevail. Arising from this, the *Desert Palace* court observed that:

(a) the *Burswood Nominees* decision was "unsound";

(b) there was "no legal basis" for the *Burswood Nominees* court to read the requirement of a higher public policy threshold into s 3(2)(*f*) of the RECJA. The words of the provision were absolutely clear that a judgment cannot be registered where it was in respect of a cause of action which would have contravened the public policy of Singapore; and

(c) the *Burswood Nominees* court should have accepted the judgment debtor's argument that the Australian judgment could not be registered under s 3(2)(*f*) of the RECJA.

15 Had I felt bound by, or at liberty to follow the passages from *Desert Palace* quoted above, I would have been inclined to allow the appeal and set aside the registration of the Judgment. However, *Desert Palace* concerned the enforcement of a foreign judgment at common law and not the registration of a foreign judgment under the RECJA. Consequently, the statements made in *Desert Palace* on the correctness of *Burswood Nominees* were *obiter*. In this regard, I note that the court in *Star Entertainment* had similarly taken the view that the comments made in *Desert Palace* regarding *Burswood Nominees* were

obiter (at [48]). This means that *Burswood Nominees* remained binding on me. In fact, by saying that *Burswood Nominees* "should be reviewed if a similar issue were to come before this court in the future" (at [114]), the *Desert Palace* court made clear that it merely disapproved of, but did not overrule *Burswood Nominees*. Thus, any departure from the actual ruling in *Burswood Nominees* was left to a future Court of Appeal.

Conclusion

16 For the reasons given above, I held that *Burswood Nominees* remained binding on me. As the facts of the present case were indistinguishable from those of *Burswood Nominees*, and as required by the doctrine of *stare decisis*, I dismissed the Judgment Debtor's appeal against the AR's decision and declined to set aside the registration of the Judgment under the RECJA.

Pang Khang Chau
Judge of the High Court

Yogarajah Yoga Sharmini and Shawn Tien Si Yuan (Haridass Ho & Partners) for the applicant;
Cheo Chai Beng Johnny (Cheo Yeoh & Associates LLC) for the respondent.