

Quek Chiau Beng v Phua Swee Pah Jimmy
[2000] SGHC 247

Case Number : DC 50072/1999
Decision Date : 24 November 2000
Tribunal/Court : High Court
Coram : G P Selvam J
Counsel Name(s) : Lee Mun Hooi and Ng Chong Hsing (Lee Mun Hooi & Co) for the plaintiff; G Raman (G Raman & Partners) for the defendant
Parties : Quek Chiau Beng — Phua Swee Pah Jimmy

Civil Procedure – Summary judgment – Unconditional leave to defend – Whether action to recover gambling debt prohibited by law – Whether summary judgment appropriate

Contract – Illegality and public policy – Gaming contract – Action to recover gambling debt – Whether Recovery under a loan – Action prohibited by law – Whether invalidity of gaming contract not affected by use of gaming chips instead of cash – s 5(2) Civil Law Act (Cap 43)

: The case

The plaintiff in this action claims S\$160,000 from the defendant. That amount is endorsed on a baccarat score card of Crown Casino in Melbourne, Australia.

The basis of the claim is that on 4 October 1998 the defendant had rolled an estimated sum of A\$586,000 of uncashable rolling chips. He returned part of the chips. At the end of the day, after giving credit to commission and payment, he owed the amount claimed. The statement of claim dated 21 January 1999 says that the defendant gambled at the Crown Casino in Melbourne, Australia. The statement of claim does not say in terms that the amount he allegedly owes is his net loss. But there can be no doubt that on the allegations, the defendant incurred a debt because he lost at baccarat. More will be said about this later. The plaintiff asserts that he was a licensed junket operator of Crown Casino. The plaintiff goes on to allege that the defendant obtained uncashable rolling chips at the Casino, not from him, but from his representative called Chen Di Hua.

The defendant filed a defence. He admits that he gambled and tumbled at the Crown Casino. He denies that the plaintiff approached him to gamble under any junket arranged at the Crown Casino. He denies in terms that he had any dealings with the plaintiff with regard to his gambling sessions at the Crown Casino and asserts that he had not obtained any `uncashable rolling chips` from the plaintiff or his representative. By way of a positive case the defendant asserts that he treated with one Quek Keng Siong, the father of the plaintiff (`Quek Sr`). The defendant goes on to assert that Quek Sr promised that `**credit** will be extended to the defendant to gamble at the said Crown Casino: Based on this promise the defendant went to Melbourne on or about 30 September 1998`. [Italics here and hereafter supplied by me]. The defendant admits that `as arranged by the said Quek, whenever the defendant wished to make a bet, he would obtain chips from the said Quek at the said gambling table. The chips were however uncashable chips`. The defendant, on the decisive point at issue, says this: `When the gambling session ended in the morning of 5 October 1998, an account was taken between myself and the said Quek. Although the said Quek claimed that I owed him a sum of S\$160,000 I disagreed with the said amount.` This assertion is further extended in the further and better particulars that `On the morning of 4 October 1998 when the said Quek produced a rough calculation of the accounts on a baccarat score card, the calculation therein was confusing and the defendant wanted the said Quek to clarify, which he failed to do so to date`.

The plaintiff applied for summary judgment. In support of the application Quek Sr filed an affidavit. A copy of a baccarat score card No Z-95806178 was exhibited. An entry in the card was in English and Chinese. In translation it read: `Jening owed Singapore dollars S\$160,000 - 3/10/98`. In the affidavit Quek Sr says, `at the end of the gambling session, it was stated in the scorecard and written in Chinese and was initialled by the defendant indicating that he was indebted to the plaintiff for the outstanding balance sum of S\$160,000`. He then added, the defendant `has clearly admitted that he did on the above mentioned occasion gamble at Crown Casino with me`. The baccarat card does not say that he owes the **plaintiff**. It merely says `Jening Owed.` There is no explanation who `Jening` was.

The defendant has declined to admit that he signed the baccarat card. I shall, however, assume that he did. On that assumption, the only conclusion to be drawn is the defendant gambled and tumbled to the tune of S\$160,000.

A comment on the pleadings and affidavits

There is no mention anywhere in the documents that there was a loan. A loan is an amount of money transferred on the understanding that it will be returned. There is no **allegation** or **evidence** in the pleadings or affidavits that either of the Queks transferred any money to the defendant. The allegations and the evidence show that the defendant bet on baccarat and lost heavily. He is therefore being sued to recover a gambling debt. That being the case, this action was a non-starter. The reason is that s 5(2) of the Civil Law Act (Cap 43) forbids in peremptory terms the bringing of such an action: **`No action shall be brought or maintained in the court for recovering any sum of money alleged to be won on any wager`**. This is a reiteration of s 5(1) of the Civil Law Act which renders all contracts or agreements by way of gaming or wagering null and void. Its gloss is that a gambling debt cannot spawn a cause of action. It is a **nudum pactum**, an empty agreement. On the allegations in the statement of claim the action therefore is forbidden by statute and ought not to have been brought. (I shall call s 5 of the Civil Law Act as `the gaming section`).

A recap of the law of gaming contracts

In 1999 I tried two cases and delivered separate judgments:

1 **Sun Cruises Ltd v Overseas Union Bank** [\[1999\] 3 SLR 404](#).

2 **Star Cruise Services Ltd v Overseas Union Bank Ltd** [\[1999\] 3 SLR 412](#).

gambling on credit Sun Cruise Star Cruise I explained in the two judgments the civil law of gaming. It would be salutary to sum up the salient points.

1 The gaming section does not render gambling illegal. It does not forbid gambling. The purpose of the provision is to put down . It means that the winner has no legal remedy against the loser to recover his wins. Illegality and ineffectiveness, that is nullity, are two different concepts.

2 The gaming section does not prohibit the loser settling his losses but he cannot be compelled to pay his losses.

3 Under the gaming section our courts are not allowed to collect gambling debts for casinos and junket operators. The courts will not permit a gambling debt to sneak in in disguise, eg as a loan or a

sale contract for chips. The courts must take a robust stand against, and stamp on, actions brought in defiance of the gaming section: see **R v Weisz, ex p Hector Macdonald** [1951] 2 KB 611.

4 The use of chips or sale of chips on credit does not validate the claim. Chips are not money or money's worth but counters for tracking the losses and the wins. They also indicate the line of credit. The scorecard merely says how much the gambler has lost. It is not evidence of a loan. It is not evidence of a contract of sale. The amount shown as owing is the amount of gambling debt. A loss cannot be disguised as a loan or sales contract to circumvent the gaming section.

5 A promise in order to be obnoxious to the second branch of the section must be a promise to pay the bet, and the prohibition relates only to recovery of money or a valuable thing alleged to be lost. The question what does the agreement really come to is a question for the tribunal of fact which will not be deceived by any specious attempt to conceal the real nature of the promise It would be strange if the consequences of the section could be evaded by so patent and artificial a device. per Lord Greene in **Hill v William Hill (Park Lane) Ltd** [1949] AC 530 at p 559.

6 In **Las Vegas Hilton Corp v Khoo Teng Hock Sunny** [1997] 1 SLR 341 the defendant admitted that there was a loan. It was not his case that no money passed or that it was a disguise of a gambling loss. The case was decided on his admission that there was a loan. The same applies to **Loh Chee Song v Liew Yong Chian** [1998] 2 SLR 641. It was not the defendant's case that no money passed hands. It was not part of the defence in both cases that the alleged 'loan' was a disguise of gambling on credit. In **The Aspinnall Curzon Ltd v Khoo Teng Hock** [1991] 2 MLJ 484 legality of gambling was given the sameness of actionability. There is a fine but fundamental distinction between the two. The authorities and analyses of principles in the and cases were not presented to the courts which decided the three cases. None of the three cases made reference to the dissenting judgment of Nicolls LJ in **Lipkin Gorman v Karpnale Ltd** [1989] 1 WLR 1340 or the masterly judgment of Lord Templeman in the same case: [1991] 2 AC 548 (HL) and **CHT v Ward** [1965] 2 QB 63. These cases explain the legal aspects of gambling with chips in a modern licensed casino. The counsel for the defendants in the trilogy failed to read and reveal these important judgments to the court.

What is a junket?

I shall now state my understanding of the role of a junket operator. In the words of **Black's Law Dictionary** (6th Ed, 1990), a junket is:

An arrangement or arrangements the primary purpose of which is to induce any person to gamble at a licensed casino and pursuant to which, and as consideration for which, a certain portion of the cost of transportation, food, lodging, and entertainment for said person is directly or indirectly paid by a casino licensee or employee or agent thereof.

What a junket operator does is to secure for the casino high net worth individuals to visit the casino as consenting captive gamblers and gamble on credit. He provides the gambler with chips and encourages him to gamble. The 'free' trips and entertainment sweeten the bait to attract the gambler to the casino. Junkets are arranged on the basis that 'Play first and pay later'. The junket operator is the casino's comprador. Because the casino does not know the gambler and the junket operator often acts as a guarantor to the casino. When a gambler loses he incurs a gambling debt irrespective of whether he receives the chips from the casino or the comprador.

Gamblers do not sell their property before they go on a junket and end up in the casino. It is when they lose heavily and return that they resort to desperate acts. In the **Sun Cruise**, **Star Cruise** and **Lipkin Gorman** cases the gamblers stole the money to pay the casino or junket operator. The purpose of the gaming section is to staunch the flow of such funds into the coffers of the casino or junket operator.

The meanderings of the action

With that backdrop I now return to the case before me. The writ was issued on 21 January 1999 while the **Star Cruise** trial was in progress. The defence was filed after I gave my decision but before release of the written judgment. On 10 May 1999 orders were made on summons for directions. The case was ordered to be set down for trial by 9 August 1999. For reasons not revealed this was not done. Then, at a pre-trial conference held on 20 August 1999, there was another order to set down the case within two weeks. Once again for reasons not revealed this was not done. There was a hiatus of nine months. On 24 May 2000 the plaintiff filed an application for summary judgment. On 8 August 2000 the deputy registrar of the District Court granted the defendant unconditional leave to defend. The plaintiff appealed to the District Court judge-in-chambers. The defendant was given conditional leave to defend. Dissatisfied with the decision, the defendant appealed to the High Court.

The decision

Counsel for the plaintiff argued before the district judge that the defendant obtained a loan and that the **Las Vegas** case created an exception to the conception of non-actionability of gaming contracts. The district judge accepted that submission. The judge said in her grounds of decision:

*My view is that the case of **Star Cruises** can be distinguished from the case of **Las Vegas Hilton Corp** and **Loh Chee Seng**. GP Selvam J's comments in [para] 88 of his judgment in the **Star Cruise** case were made and must be viewed in the context of the special circumstances of that case which involved a claim by the casino company itself to recover a gaming debt. That case did not involve a loan of moneys for gambling.*

What I said about the **Las Vegas Hilton Corp** case was that there was no challenge to the assertion that there was a loan. There was an admission that there was a loan. Consequently, whether there was a loan was not in issue. In this case there was no allegation, admission or proof of a loan in the pleadings or the affidavits. So it is diametrically different.

In the present case there is neither an allegation nor any evidence of a loan by anyone in the pleadings or the affidavits. On the other hand the pleadings of this case assert or suggest a case of loss at gambling on credit. The non-encashable chips in the hands of the defendant were worth nothing. They were mere counters measuring the credit line to enable the defendant to gamble. In **CHT Ltd v Ward** [1965] 2 QB 63 at p 79E it was argued that the issue of chips was equivalent to a **loan of money**. The chips, it was said, were private currency. Davies LJ rejected this contention and said at pp 79-80:

People do not game in order to win chips; they game in order to win money. The chips are not money or money's worth; they are mere counters or symbols used for the convenience of all concerned in the gaming. If actual money were lent to the defendant in order to game and the game were played

for cash, the defendant would pay her own losses in cash and the plaintiffs would be under no obligation to pay anything to the winners. Conversely, it is to be observed that if the defendant paid actual cash to the plaintiffs on taking delivery of chips, the defendant would be under no obligation thereafter to pay anything to the plaintiffs, though, of course, the plaintiffs would be bound to pay cash to the winners to redeem the chips.

For the purpose of the gaming section, it makes no difference that the gaming is carried on, not with cash, but with gaming chips supplied by a gambling club to its members; and this is true even though the chips are supplied on terms which entitle the member to use them either for gaming or to buy refreshments in the club. Whether or not there is a separate contract for the supply of chips, their use for the purpose of gaming is `simply a convenient mechanism for facilitating gambling with money` and the fact that chips are used does not affect the invalidity of the gaming contract.` - **Chitty on Contracts** (28th Ed), para 40-019.

The evidence (including the evidence of the defendant) show that what is sought is a gambling loss. When counsel spoke of a loan it was his wishful thinking. It arose out of wishes rather than facts. The **Las Vegas Hilton Corp** case was the direct stimulus which made him give the label of a loan to what was in fact a gambling debt. When was a loan made? How much money was given as a loan? Where was it given? Who gave it? What was the currency of the loan? There is no hint of any of these matters in the pleadings or the affidavits. The reality of the situation was that there was a gaming debt.

The defendant has raised two points: First he played the gambling game of baccarat on credit and lost. As this is a gambling debt it is null and void. No action can be brought in Singapore to recover it. I do not think that the position is different in Australia. Next, he lost to the Crown Casino or Quek Sr but not the plaintiff. So he incurred the gaming debt to the casino or his father. There was no loan or any other valid consideration to found a cause of action by the plaintiff or his father or the casino. The plaintiff is a stranger to the transaction. I make these conclusions assuming the allegations as facts. The trial court must make the finding of facts and apply the law.

In the result the defendant is entitled to treat the plaintiff to the trouble of a trial. An application for summary judgment does not fit in with the fit of things of this case. The plaintiff ought not to have been allowed to alter course at the late stage and ignore the order of court to set the case down for trial. The case was ordered to be set down for trial not once but twice. Both were ignored with impunity.

Accordingly, I allow the appeal and set aside the order of the district judge and restore the order of the deputy registrar. The plaintiff shall pay the defendant the costs of his appeal to the district judge and the defendant`s appeal to the High Court.

Outcome:

Appeal allowed.