Ling Yew Kong *v* Teo Vin Li Richard
[2014] SGHC 6

Case Number : Suit No 352 of 2013 (Registrar's Appeal No 310 of 2013)

Decision Date : 09 January 2014

Tribunal/Court : High Court

Coram : George Wei JC

Counsel Name(s) : Yoong Nim Chor and Wong Xun-Ai (KhattarWong LLP) for the plaintiff/appellant; Godwin Gilbert Campos (Godwin Campos LLC) for defendant/respondent.

Parties : Ling Yew Kong — Teo Vin Li Richard

Civil procedure – Summary judgment

Civil procedure – Offer to settle

9 January 2014 Judgment reserved.

George Wei JC:

Introduction

1 This is an appeal by the Plaintiff from the decision of the learned Assistant Registrar Teo Guan Kee ("the AR") in Summons No 3506 of 2013 ("Sum 3506") delivered on 28 August 2013, granting the Defendant conditional leave to defend Suit No 352 of 2013 ("the Second Suit") under O 14 r 4 of the Rules of Court (Cap 233, R 5, 2004 Rev Ed) ("ROC"). The subject matter of the Second Suit relates back to an earlier action between the same parties which was supposed to have been "resolved" by means of a Settlement Agreement dated 1 February 2013 ("the Settlement Agreement").

2 The appeal involves an interesting legal issue which is whether, and if so to what degree, the alleged illegality in an action would taint a settlement agreement arising out of that action.

3 After hearing the parties, I am allowing the appeal and reversing the decision of the AR granting conditional leave to defend. Summary judgment is, therefore, entered in favour of the Plaintiff.

The Facts

The parties

4 The Plaintiff and Defendant were business associates in a public company in Singapore, Firstlink Investments Corporation Limited ("Firstlink"). The Plaintiff, Ling Yew Kong, is the Executive Chairman of Firstlink ("the Plaintiff"), and the Defendant, Teo Vin Li Richard (the "Defendant"), got to know the Plaintiff through various business dealings.

5 The Plaintiff is the appellant in the appeal before me while the Defendant is the respondent. I refer to parties in their original capacity as in the hearing below.

Suit No 733 of 2012 – the First Suit

6 Suit No 733 of 2012 was started in the High Court of Singapore on 4 September 2012 ("the First Suit"). The First Suit embodied a claim by the plaintiff against the defendant for $730,000 alleged to be owed by the Defendant together with interests and costs. According to the Plaintiff's Statement of Claim in the First Suit dated 4 September 2012, the money was loaned to the Defendant to enable the Defendant to pay a debt that he owed to one Foo Chek Hin ("Foo"). Payment was made by the Plaintiff by means of a cheque dated 6 January 2012 drawn to the order of Foo. The Plaintiff's claim was that Defendant had agreed to repay the monies, but eventually failed to do so. In support of the claim, the Plaintiff pleaded a signed Acknowledgement dated 5 January 2012 (hereinafter referred to as "the Acknowledgment of Debt"). The Plaintiff in further support also asserted that the Defendant had attempted to make a part payment of the debt on or around 17 February 2012 by means of a cheque of $100,000 drawn to the order of the Plaintiff, and was therefore a further acknowledgment of the debt. The cheque was subsequently dishonoured when presented for payment.

7 The defence filed in the First Suit dated 2 October 2012 denied the claim. The defence was that the Plaintiff and Defendant had discussed a number of commercial projects in early 2011 and through the discussions the Defendant came to trust and have confidence in the Plaintiff, treating the Plaintiff as a "mentor and a good friend". The Defendant asserted that the Plaintiff frequently entertained businessmen at the integrated resorts in Singapore, and that sometime in April 2011 the Plaintiff and Defendant agreed that the Plaintiff would "act as a junket" by offering credit in the form of non-negotiable chips to businessmen and friends of the Plaintiff and the Defendant. The Defendant asserted that by doing this the Plaintiff would earn a "rolling commission" from the casino. In accordance with this alleged agreement, the Plaintiff was said to have opened a credit account with Marina Bay Sands casino ("MBS") whereby the Plaintiff enjoyed a credit line up to $500,000. In this way, the Plaintiff was alleged to have withdrawn chips which were passed to businessmen and friends of the Plaintiff and Defendant. This was said to result in the Plaintiff securing a commission.

8 By doing this, the Defendant alleged that the Plaintiff was acting as a junket in contravention of s 110(1) of the Casino Control Act (Cap 33A, 2007 Rev Ed) ("CCA"). In addition, the Defendant pleaded that the Plaintiff was acting as a moneylender by providing chips on credit contrary to s 108(9) of the CCA. According to the Defendant, by December 2011, the Plaintiff was indebted to MBS as a result of gambling losses, and it was the Defendant who then "suggested" that the Plaintiff borrow money from Foo, a mutual friend, so as to discharge his indebtedness to MBS. Subsequently, the Plaintiff repaid Foo by means of the cheque payment of $730,000 that was referred to in the Plaintiff's Statement of Claim. As for the alleged attempted part payment, the Defendant's explanation was that the cheque of $100,000 was presented to the Plaintiff to cover the gambling losses which had been incurred by "one of the Defendant's friends". The cheque was supposed to be by way of security pending payment by the friend (and not to be presented without informing the Defendant). Therefore, according to the Defendant, he did not owe the sum of $730,000 as this was really the sum paid off to Foo.

9 To cap off the defence, the Defendant also asserted that in any case, if it was found otherwise, the alleged debt was unenforceable on account of contravention of the CCA.

The Settlement Agreement

10 Whatever the parties' position in the First Suit, this eventually culminated in a Settlement Agreement between the parties settling the First Suit. As the Settlement Agreement was the basis of the Plaintiff's claim in the Second Suit, parties in the Second Suit had attempted to explain their rationale for entering into this Settlement Agreement, which I now briefly state for background purposes.

11 Given the claim and defence filed in the First Suit, the adequacy and/or interpretation of the Acknowledgement of Debt was of some importance. In Summons No 5598 of 2012 ("Sum 5598"), the Defendant had applied to expunge certain portions of the Plaintiff's affidavit dated 16 October 2012 (pursuant to another Summons No 5334 of 2012), which contained an admission note dated 3 October 2012. Sum 5598 came before the learned Assistant Registrar Boey Yi Ling Germaine ("AR Boey"), who dismissed the application. On appeal (Registrar's Appeal No 501 of 2012), Lai Siu Chiu J reversed AR Boey's decision, thereby expunging the admission note of 3 October 2012 that the Plaintiff had hoped to rely on. [note: 1] The Plaintiff asserts that this was the context that explains why he was amenable to a settlement – by way of a compromise as to their different positions in the First Suit. [note: 2]

12 The Defendant asserts that he was amenable to a settlement even though he "appreciated the strength" of his position. [note: 3] The First Suit was settled as "litigation was proving to be too prolonged, contentious and costly" and also because the litigious proceedings "had a negative impact on my business relationships" and would "impose further strain on me and worsen deteriorating business relations between myself and the aforesaid third party friends." [note: 4]

13 The Settlement Agreement was signed on 1 February 2013 as subsequently supplemented by an exchange of letters dated 5 February 2013 between the Plaintiff and Defendant's solicitors. I elaborate further on the Settlement Agreement below at [19] to [24], but suffice to state for now the main terms of the Settlement Agreement were that the claim for $730,000 in the First Suit was to be settled as follows: [note: 5]

(a) Payment of $100,000 in cash to the Plaintiff (or his authorised representative) no later than 28 February 2013.

(b) Payment of $230,000 in cash to the Plaintiff (or his authorised representative) no later than 31 March 2013.

(c) Delivery by the Defendant to the Plaintiff (or his authorised representative) of share transfer forms in respect of 11,500,000 ordinary shares in the capital of Firstlink (with the relevant share certificates) no later than 15 February 2013. In the event that this was not done, the Defendant would be immediately liable to pay the sum of $400,000.

(d) Provision that if the Defendant failed to meet the above obligations by the dates as provided that the Defendant would forthwith become liable for all amounts not so paid.

14 In accordance with the Settlement Agreement, the Plaintiff filed a notice of discontinuance in the First Suit on 5 February 2013. Subsequently, the Defendant caused the share transfer forms together with the relevant share certificates to be delivered to the Plaintiff. [note: 6] The Defendant, however, failed to make the other payments.

The Second Suit

15 As a result of the Defendant's failure to fully satisfy the terms of the Settlement Agreement, the Plaintiff commenced the Second Suit where he claimed against the Defendant the balance owing under the Settlement Agreement (*ie*, $330,000 which is $730,000 less the value of the Firstlink shares).

16 The Defence filed in the Second Suit is essentially run on two main fronts. Put briefly, the first defence is that the Settlement Agreement is tainted by the very same "illegality" which affected the

Plaintiff's claim in the First Suit (I refer to this as "the illegality defence"). The second is that there was an "understanding" that the Defendant would seek to recover the sum of $330,000 from certain third party friends who had incurred gaming losses and to thereafter hand the monies over to the Plaintiff. In short, the second defence is that the Defendant was never personally liable as such for the $330,000 and that what was required was that he should try to recover the monies from third party friends despite the terms of the Settlement Agreement. [note: 7]

17 In the Reply filed in the Second Suit, the Plaintiff (save for any admissions in the Reply) joined issues with the Defendant on the Defence. Insofar as the allegations that the Plaintiff was acting as a junket operator at MBS and that the debts were incurred in that context, the Plaintiff pleaded that the allegations were largely "verbatim repeats" of what had been pleaded by the Defendant in the First Suit and that the Defendant should be fully aware of the Plaintiff's position. [note: 8] The Plaintiff in the Second Suit also asserts that the defence filed in the First Suit (*ie*, that he was running a junket operation and was moneylending) was irrelevant to the claim in the Second Suit and that in any case, all issues arising from the First Suit had been "fully and finally settled" as between the Plaintiff and the Defendant by virtue of the Settlement Agreement. For good measure, the Plaintiff also pleads that the Defendant never applied to strike out the Plaintiff's claim in the First Suit and that it was the Defendant who approached the Plaintiff for settlement discussions. [note: 9]

18 Insofar as the pleadings filed in the Second Suit are concerned, it is noted that the Plaintiff does not make any express reference to the assertion that the Settlement Agreement arose out of earlier litigation said to concern gaming debts and an illicit junket operation. Whilst the Plaintiff did generally join issues with the defence, the main position taken on the assertion of gaming debts and junket operation is that even if the Plaintiff had acted as a junket operator, there was no allegation or suggestion that the Plaintiff had extended any credit to the Defendant in the form of non-negotiable chips or that the Defendant was a customer of the Plaintiff in the junket business. [note: 10] Referring back to the Acknowledgement of Debt which formed the basis of the First Suit, the Plaintiff in the written submissions states that the Defendant never explained how the debt owed to Foo and paid by the Plaintiff on behalf of the Defendant was unenforceable by virtue of the alleged junket operations. Instead, the Plaintiff notes that the defence position in the First Suit on the debt owed to Foo was that the sum of $730,000 was actually an amount borrowed by the Plaintiff from Foo and that the cheque made out to Foo by the Plaintiff was in fact repayment of the Plaintiff's debt to Foo.

The striking out application and the Settlement Agreement

19 The Plaintiff later took out Sum 3506 on 10 July 2013, which was an application for summary judgment in the Second Action. Central to this application was the parties' position on the Settlement Agreement, which I elaborate on now. [note: 11]

20 The Settlement Agreement is dated 1 February 2013 and was signed by the Plaintiff and the Defendant. It refers to the First Suit, sets out the various terms of the settlement (see [13] above) and concludes with the provision that:

> Subject to and based on the above, the parties agree that the Suit is fully and finally settled as between them. This Agreement is governed by and shall be construed in accordance with, the laws of Singapore.

21 On 5 February 2013, an exchange of letters took place between the solicitors for the Plaintiff and Defendant. [note: 12] The essence of these letters is that the Defendant's solicitor confirmed that

the Defendant had entered into the Settlement Agreement in accordance with the terms summarised earlier subject to the Plaintiff filing a discontinuance of the First Suit. The confirmation letter from the Defendant's solicitor makes no reference at all to any terms or conditions other than those that have been referred to. Specifically, there is no mention of any understanding or arrangement to the effect that the Defendant's liability for the cash payments under the settlement was linked in any way to the recovery by the Defendant of the same from the third party friends. There is no dispute that the notice of discontinuance was indeed filed on time by the Plaintiff. Indeed, it is also clear that on or around 28 February 2013, the Defendant delivered the share transfer forms and share certificates. [note: 13]

22 By doing so, the Plaintiff's case is that Defendant (albeit late) had "partly performed" the Settlement Agreement and demonstrated that "he considered himself bound by the agreement." [note: 14] When the delivery of the share transfer forms and certificates was made, there was no indication made of any modification or qualification to the written terms of the Settlement Agreement. [note: 15]

23 The Defendant's explanation of the return of the shares is rather different. According to the Defendant, the Defendant purchased 11,500,000 ordinary shares in the Plaintiff's company sometime in 2011. [note: 16] This was alleged to have been done with the encouragement of the Plaintiff. The Defendant asserts that he wanted to return these shares and felt that this could be done by means of settlement of the First Suit. To this end, the Defendant states that they agreed that the shares would be assigned a value of $400,000 [note: 17]. The Defendant adds that the transfer of the shares was "fundamental" to the settlement and that he agreed to transfer the shares by way of settlement of his "limited liability" in respect of the gaming losses of $730,000 said to have been incurred by the "Plaintiff and our friends" at MBS. [note: 18] By "limited liability" it appears that the Defendant is referring (at least in part) to his "liability" to recover the monies borrowed/losses incurred by the Defendant's friends under the alleged illegal junket scheme. The Defendant asserts that he never admitted personal liability for the sum of $330,000 and that he had reached an understanding with the Plaintiff that the Defendant would recover the sum of $330,000 "from our mutual friends". [note: 19]

24 In any case, as mentioned above, the Defendant's position is also that the Settlement Agreement was tainted by illegality and therefore should not be enforced by the courts. I will elaborate on this illegality defence at [38] to [46] below where I discuss my findings.

The decision of the AR

25 Sum 3506 came before the AR who, on 28 August 2013, granted the Defendant leave to defend upon the condition that Defendant provided security of $330,000 in the form of a banker's guarantee by 18 September 2013. In his brief grounds of decision, the reason was that:

> … although the Defendant appears to have raised a triable issue … in the form of the illegality argument, namely that the debt arose out of circumstances in which the Plaintiff would be deemed an unlicensed moneylender pursuant to section 108 of the Casino Control Act read with section 14 of the Moneylenders Act, this defence is shadowy in nature and does not justify the granting of unconditional leave to defend.

26 The AR also stated that he decided to grant conditional leave because the evidence adduced by the Plaintiff (essentially the acknowledgment note from Foo and the cheque image):

> …falls just short of what in my view is required to rebut the Defendant's assertions that the

transaction underlying the settlement agreement was unlicensed moneylending.

27 Significantly, the AR also found that the Defendant's assertion that there was an oral agreement (to the effect that the Defendant was only required to pay $330,000 under the Settlement Agreement if and when the Defendant managed to recover the same from the third party friends) was unsubstantiated. The AR's view was that that there was simply no evidence to support the existence of such an agreement which would allow him to place any weight on the assertion for the purposes of the application before him. The Defendant had merely made a bare assertion as to the oral agreement and had never mentioned such an oral agreement in any of the earlier communications with the Plaintiff.

The issues before this court

28 Given the findings of the AR, the only issue before this court is whether the AR had erred in law in granting the defendant conditional leave to defend having in mind that the illegality defence was "shadowy in nature". The legal issue before this court is, therefore, whether having settled the First Suit, the Defendant can or should be allowed to raise the illegality defence again as a means of undermining the Settlement Agreement, *viz*, in arguing that the Settlement Agreement is tainted by the alleged illegality in the First Suit.

Applicable Legal Principles: Summary Judgment

29 Before examining the illegality defence, I first discuss the applicable legal principles pertaining to an application for summary judgment. Order 14 r 1 of the ROC provides that:

> **1**. **Application by plaintiff for summary judgment (O. 14, r. 1)**
>
> Where a statement of claim has been served on a defendant and that defendant has served a defence to the statement of claim, the plaintiff may on the ground that that defendant has no defence to a claim included in the writ … apply to the Court for judgment against that defendant.

30 The principles governing the grant of summary judgement are well known and will be referred to in brief. As the author in *Singapore Civil Procedure 2013* (G P Selvam gen ed) (Sweet & Maxwell, 2013) ("*Selvam on Singapore Civil Procedure*") explains, the purpose of a summary judgment is to enable a plaintiff to obtain a quick judgment where there is plainly no defence to the claim. At para 14/1/2, he further states that:

> [i]f the defendant's only suggested defence is a point of law and the court can see at once that the point is misconceived (or if arguable can be shown shortly to be plainly unsustainable) the plaintiff is entitled to judgment.

31 On the other hand, the author continues to state that summary judgment is not appropriate if the case lends itself to determining points of law or construction that may take hours or even days and the citation of many authorities before the court is in a position to arrive at a final decision.

32 Order 14 r 3 of the ROC goes on to provide that unless the court dismisses the application or the defendant satisfies the court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the claim (in whole or part), the court may give judgment for the plaintiff. Where the court determines that leave to defend is appropriate, O 14 r 4 provides that the leave may either be unconditional or on terms such as the provision of security. In deciding whether it is appropriate to grant summary judgment, it has been said that even an assertion

of fraud is not necessarily sufficient to avoid summary judgment if the court believes that there is no prospect of success at trial (see *Ganesan Carlose & Partners v American Home Assurance Co* [1994] 2 SLR 332). On the other hand, this court is reminded that a defendant is not to be shut out from defending unless it is very clear that there is no defence. Indeed *Selvam on Singapore Civil Procedure* at para 14/4/5 states that "where the defence can be described as more than shadowy but less than probable, leave to defend should be given."

33 In deciding whether leave to defend should be granted, the court is also reminded that leave to defend is to be granted not simply in cases where there appears to be a fair case for defence but also where there is "some other reason" for a trial. Whilst the latter words are of wide scope, ordinarily, it is suggested, there should be some connection between the "other reason" and the substantive merits of the Plaintiff's claim. Tricky questions can arise where the reason (or even the main reason) why the Defendant wants a trial is because of publicity. That said, *Selvam on Singapore Civil Procedure* at para 14/4/6 gives the example of a decision where the plaintiff's case tended to show that he had acted harshly or unconscionably and it is thought desirable that if he were to get judgment at all it should be in the full light of publicity (citing *Bank fur Gemeinwirtshaft AG v City of London Garages Ltd* [1971] 1 All ER 541 at 548). Yet another example cited was the decision of Chan Sek Keong J (as he then was) in *Concentrate Engineering Pte Ltd v United Malayan Banking Corporation Bhd* [1990] SLR 514. The latter was a case where the evidence showed a bold and unusual scheme to defraud by use of apparently forged cheques. In these circumstances, the defendant bank suspected that someone inside the plaintiff was involved. The decision of Chan Sek Keong J was that the sheer audacity of the sophisticated fraud and the absence of explanation by the plaintiff's directors was "some other reason" for a trial. That said, it does not follow that leave to defend is always appropriate simply because there are background criminal investigations or that the defendant needs more time. Each case for summary judgment must, of course, turn on its own facts. Where it is clear that there is no defence, the fact that the court disapproves of the general behaviour of the Plaintiff or parties is not a reason to deny summary judgment. The position will be different if the unconscionable conduct of the Plaintiff opens the door to a possible defence.

34 In a similar vein, Jeffrey Pinsler SC in *Principles of Civil Procedure*, (Academy Publishing, 2013) ("*Pinsler on Principles of Civil Procedure*") at 266 states that since summary judgment is:

> … a final judgment, which disregards fact finding procedures leading to a thorough adjudication at trial, the court would want to be satisfied that there is no other reason why the case should go through the normal case of litigation.

35 The caveat stated in *Pinsler on Principles of Civil Procedure* at 267 also bears underscoring:

> [A] defendant must show clear justification for his reliance on this ground. A vague allegation that a case needs to be investigated in the absence of good reason would not constitute some other reason for trial.

36 Where leave to defend is appropriate, an issue may arise as to whether the leave should be unconditional or subject to terms. *Selvam on Singapore Civil Procedure* at para 14/4/12 explains that granting leave to defend subject to terms such as provision of security is appropriate in those cases where there is good ground for believing that the defence is a sham defence and where the court is very nearly prepared to give judgment. In this respect, it has often been said that conditional leave is appropriate where the defence is "shadowy" or "suspicious". Whilst these adjectives may be of some (limited) assistance, it is necessary to bear in mind the principle that lies behind the exercise of the discretion. To this end, the comments of Sundaresh Menon JC (as he then was) in *Abdul Salam Asanaru Pillai v Nomanbhoy & Sons Pte Ltd* [2007] 2 SLR(R) 856 bear repeating. In that case the

court stated that the multitude of terms used such as "a real doubt about the defendant's good faith", "shadowy", "sham", "suspicious", "hardly of substance" were somewhat "pejorative" and which may obscure the true principle. In his view, imposition of a condition on the leave to defend was appropriate in those cases where the court is of the view that whilst it cannot be said that the claimed defence is so hopeless that in truth there is no defence, that "the overall impression is such that some demonstration of commitment on the part of the defendant to the claimed defence is called for." It follows that unconditional leave to defend should be granted where there is a reasonable ground (fair probability) for a defence. On the other hand, where the court is satisfied that there is no defence, it would not be appropriate to permit the defendant to "purchase" leave to defend by means of payment of security for the claim. Conditional leave may be most appropriate in those cases where the apparent strength of the claimed defence lies somewhere between (reasonable ground and no defence) coupled with some doubt as to the sincerity of the defendant's position or intention to defend. Clearly, however, the interplay between these two points will depend on the circumstances of each case.

37 With these principles in mind, I now turn to discuss whether the AR had erred in granting the Defendant conditional leave to defend (hence dismissing the application for summary judgment) in the light of the illegality defence.

Should the Defendant be allowed to raise the very same set of issues again as a means of undermining the Settlement Agreement, *viz* in arguing that the Settlement Agreement is tainted by the alleged illegality in the First Suit?

The illegality/money-lending argument

38 The illegality defence asserted is predicated on the submissions that the subject sum of the Second Suit, $330,000, was derived from illegal gambling activities which the Plaintiff was involved in. In the Defendant's written submissions, it is said that the sum was the total of the illegal gambling debts incurred and owed to the Plaintiff by certain third party friends. The Settlement Agreement reached in the First Suit and which was the basis of the claim in the Second Suit is said to have been entered into on the premise that the Plaintiff and Defendant preserve their business relations and friendship and that in this regard the Defendant would not expose further details of the Plaintiff's illegal junket operations. Even though the Plaintiff (in the Second Suit) is suing on the basis of the Settlement Agreement, the Defendant asserts that the gaming matters of the First Suit are not irrelevant since any settlement agreement founded on an illegal gambling debt was defective and that, once tainted, any residual claim based on the Settlement Agreement must be unenforceable.

39 Section 108(9)(*a*) of the CCA provides that:

> **108**.—(9) Any person who —
>
> (*a*) provides chips on credit to persons other than as permitted in subsection (7) or (7A) shall be deemed to be a moneylender for the purposes of the Moneylenders Act (Cap.188); …

40 Subsections (7) and (7A) are concerned with the provision of chips on credit by a casino operator and a licensed international market agent and are not relevant to the proceedings at hand. In addition the Defendant relies on s 110(1) of the CCA which provides that:

> **Prohibited casino marketing arrangements**
>
> 110.—(1) No person shall organise or conduct a casino marketing arrangement which involves the

participation of any citizen of Singapore or permanent resident of Singapore.

41 A "casino marketing arrangement" is defined in s 2(1) of the CCA (with particular reference to s 2(1)(*a*)) as:

> … an arrangement whereby a person organises, promotes or facilitates the playing of any game in a casino by one or more patrons, for which the first-mentioned person receives from the casino operator or from the person for the time being in charge of the casino
>
> (*a*) a commission based on the turnover of play in the casino attributable to the patron or patrons or otherwise derived from the play of the patron or patrons;
>
> …

42 It will be recalled that the basic position of the Defendant in the First Suit was that the Plaintiff had opened an account at MBS and that he would from time to time withdraw non-negotiable chips to pass to friends and business associates to use for gaming purposes. By doing this, the Plaintiff was said to have earned a rolling commission.

43 Assuming that the Plaintiff was acting contrary to s 108(9)(*a*) of the CCA, the Defendant's submission was that the Plaintiff was also caught by s 14(2) of the Moneylenders Act (Cap 188, 2010 Rev Ed) ("MLA"), which provides that:

> 14.—(2) where any contract for a loan has been granted by an unlicensed moneylender, or any guarantee or security has been given for such a loan —
>
> (*a*) the contract for the loan, and the guarantee or security, as the case may be, shall be unenforceable; and
>
> (*b*) any money paid by or on behalf of the unlicensed moneylender under the contract for the loan shall not be recoverable in any court of law.

44 In addition, reference should also be made here to ss 5(1) and 5(6) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA") which provide that:

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

45 On this basis, the defence in the First Suit was that the alleged debt owed was in respect of gaming arrangements that were rendered null and void by s 14(2) of the MLA and ss 5(1) and 5(6) of

the CLA.

46 The Plaintiff in the First Suit, it will be recalled, pleaded that the Defendant owed a sum of $730,000 to Foo, which debt had been paid by Plaintiff on behalf of the Defendant. The Defendant was said to have acknowledged this and had undertaken to repay the Plaintiff. It will be recalled that the Settlement Agreement for $730,000 was reached shortly after the Plaintiff encountered difficulties in obtaining summary judgment in the First Suit because of concerns over the Acknowledgement of Debt which the Defendant had signed. [note: 20] There was no finding by any court that the Plaintiff was in fact running an illegal junket operation or that he was otherwise, in breach of, or caught by provisions of the CCA, MLA or CLA. Indeed, it bears repeating that it remains unclear as to what if any connection there was between the debt owed to Foo and the alleged junket/gaming activities. The allegations made by the Defendant were very serious and had not been established at the time when the First Suit was settled. There can be no doubt that if the First Suit had gone to trial, there would likely have been considerable dispute over the facts (never mind the law) over the relationship between the parties and various "third party friends". Even though the Defendant had made serious allegations in the First Suit, it is important to take note that at the time of the Settlement, there was no finding at all of illicit moneylending and it was by no means certain that the Defendant would have been able to establish the moneylending/gaming defence.

The Validity and Effect of the Settlement Agreement

47 I come now to the crux of the legal issue which is whether the Defendant should be allowed to raise the same illegality defence as a means of undermining the Settlement Agreement, in arguing that the Settlement Agreement is affected by the alleged illegality in the First Suit. This is bearing in mind the fact that there was no conclusive finding of any illegality in the First Suit given that parties entered into a Settlement Agreement before this issue could be determined.

48 The position of the Defendant in the Second Suit is that the validity of the Settlement Agreement is affected or tainted by the same illegality which made the debt irrecoverable in the First Suit, *ie*, that it was premised on a gaming and/or moneylending contract and was, therefore, unenforceable. Parties have raised a number of cases in support of their arguments, and I now turn to discuss their applicability in the present case before me.

Tan Sim Lay v Lim Kiat Seng [1996] 2 SLR(R) 147

49 In *Tan Sim Lay v Lim Kiat Seng* [1996] 2 SLR(R) 147 ("*Tan Sim Lay*"), the defendant had admitted a debt and agreed to pay a sum of money to the plaintiff in consideration of the plaintiff forbearing to sue on the said debt. When the plaintiff brought an action for breach of the agreement, the defendant averred that the agreement was a settlement agreement arising from a series of unlawful moneylending transactions in which the plaintiff had lent money as an unlicensed moneylender to the defendant. The plaintiff, on the other hand, alleged that the monies were advanced purely as investment in the defendant's money changing business. When the case was heard by Choo Han Teck JC (as he then was), the learned judicial commissioner found (at [15]) that there was not the slightest evidence that the plaintiff's dealings with the defendant could be regarded as conventional business investments. The court held that the monies advanced were clearly loans and that:

> [i]nterest was payable on these loans and were just as dubiously dubbed profits. The undisputed evidence was that the profits were not only fixed in advance but were at a rate up to 152% per annum, clearly exorbitant.

50 Choo JC, therefore, held at [20] that the plaintiff had used the term "investment" to camouflage "blatant moneylending transactions."

51 In the present case, the Defendant cites *Tan Sim Lay* as authority for the proposition that it is not the court's position that the terms of a settlement agreement made between the parties is conclusively the *only* evidence or foundation upon which the court will decide the liability of a defendant. The validity of the settlement agreement would depend in part on whether the original dispute that was settled was one which was tainted by moneylending. That said, it is to be noted that *Tan Sim Lay* was a decision reached after trial and was based on the finding that the plaintiff had indeed acted as a moneylender in loaning monies to the defendant. That being so, Choo J found that the agreement which had been entered into for the settlement of the various moneylending transactions was caught by the MLA.

52 In the present case, however, there has been no finding of moneylending/gaming in the First Suit. Notwithstanding the seriousness of the allegations of the Defendant, it cannot be said with confidence that the moneylending/gaming defence would have succeeded if the First Suit had gone to trial. The question is whether the Defendant, having chosen to enter into a settlement agreement over the First Suit, should now be entitled to raise the same legal arguments (*ie*, the illegality defence) which had been raised but not conclusively decided in the First Suit. If the Defendant is entitled to raise the same legal arguments, then at trial in the Second Suit, the Defendant could potentially be able to establish that the $730,000 referred to in the Settlement Agreement is in respect of gaming debts, and therefore a serious question will arise as to whether a defence based on the MLA and CLA is made out. However, since this was not the case in *Tan Sim Lay*, I find that it does little to aid the Defendant's arguments in this appeal.

Quek Chiau Beng v Phua Swee Pah Jimmy [2000] 3 SLR(R) 761

53 *Quek Chiau Beng v Phua Swee Pah Jimmy* [2000] 3 SLR(R) 761 ("*Quek Chiau Beng*") concerned a claim for monies owed (S$160,000) in respect of gaming at a casino in Australia. The sum of money owed was apparently endorsed on certain baccarat score cards. The plaintiff in his claim asserted that he was a licensed junket operator at the casino and that the defendant had obtained un-cashable rolling chips from the plaintiff's representative. The defendant, whilst admitting that he gambled at the casino, denied obtaining the chips from the plaintiff. Instead, his evidence was that the plaintiff's father had promised to extend him credit to gamble at the casino and that he had obtained the chips from the plaintiff's father. The plaintiff applied for summary judgment based on the sum as set out on the score card (which was exhibited in the affidavit filed in support). In holding that the monies were not recoverable under s 5(2) of the CLA, G P Selvam J noted that there was no mention anywhere in the documents that there was any loan. Instead, the allegations and evidence (as pleaded and set out in the affidavits) was that the defendant had betted on baccarat and had lost heavily. The learned judge found (in the context of an application for summary judgment under O 14 r 1 of the ROC) that the defendant was being sued to recover a gambling debt. That being so, s 5(2) of the CLA applied. All contracts or agreements by way of gaming were null and void, *ie*, *nudum pactum*.

54 In coming to his decision, the learned judge commented at [8] that the gaming section of CLA did not render gambling illegal as such. The purpose was to put down gambling on credit. He stated as follows:

> 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.

…

… 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 sale contract for chips.

55 Selvam J observed at [15] that:

[t]he 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… 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.

56 That being so, the defendant was granted unconditional leave to defend (reversing the decision below which had granted conditional leave).

57 Whilst it is understandable for the Defendant in the present case to cite *Quek Chiau Beng*, it is to be noted that on the basis of the pleadings and affidavits it was *clear* to Selvam J that the debt was not incurred by way of a loan – it was a gambling debt which arose out of bets placed on baccarat at the Australian casino. That being so, unconditional leave to defend was granted as the defendant in *Quek Chiau Beng* appeared to have a good defence based on the evidence before the court. In the present case, the Plaintiff's claim in the First Suit was for recovery of a debt said to have been acknowledged by the Defendant. Whilst the Defendant has made assertions that the basis of the First Suit in fact concerned an illicit junket operation and gaming, this was never conclusively established. In the Plaintiff's written submissions in Sum 3506 (the application for summary judgment), the Plaintiff went on to argue that even if he had been running an unauthorised junket scheme in Singapore, this had no bearing on the debt which the Defendant owed to the Plaintiff. That said, it bears repeating that the Plaintiff has, in general terms, joined issue with the Defendant and that an important reason as to why the AR declined to award summary judgment was because the acknowledgement note fell just short of what was needed to rebut the assertion that the transaction underlying the settlement was unlicensed money lending. In contrast, Selvam J was not dealing with a case where the claim was to enforce the terms of a settlement agreement: which agreement had been entered into to settle an earlier dispute in which there were *unproven* allegations of moneylending and gaming. Instead, *Quek Chiau Beng* concerned an application for summary judgment to recover a sum of money *which on the pleadings and affidavits before the court concerned a gambling debt*. It was in this context that Selvam J held that for the purposes of s 5(2) CLA, it made no difference that the gaming was carried out with gaming chips and not cash. (Gaming chips are not money or money's worth but counters for tracking the losses and wins.)

Star Cruises Services Ltd v Overseas Union Bank Ltd [1999] 2 SLR(R) 183

5 8 *Star Cruises Services Ltd v Overseas Union Bank Ltd* [1999] 2 SLR(R) 183 ("*Star Cruises*") is another decision by Selvam J on the effect of a contract arising out of gaming. In that case, the plaintiff casino operator claimed a sum of money from the defendant bank (OUB) in respect of three cashier's orders issued by OUB to the plaintiff. OUB in turn claimed that the cashier's orders had been fraudulently issued by an employee in connection with gambling transactions. In coming to his decision (in favour of OUB), the learned judge set out a helpful summary of the public policy reasons for the law's aversion to gaming and wagering contracts and the attempts to circumvent rules against recovery of gambling debts by lending monies to gamblers and attempts to recover the gaming debts by means of a claim for repayment of a loan. Selvam J noted s 6(1)(2) of the Civil Law Act (Cap 43,

1994 Rev Ed) (which later was amended to the current s 5(1)(2) of CLA) and commented (at [68]) that:

> … [g]aming 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 6(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.

59 The learned judge continues at [69] by holding that the clamp down

> … 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 …

60 The decision in *Star Cruises* arose after a trial which led Selvam J hold (at [105]) that all the cashier's orders represented gaming losses *ie*, money won by way of gambling at the plaintiff's casino. In the present case, there has yet to be a trial and the application is for summary judgment based on the written terms of a Settlement Agreement. The Settlement Agreement does not on its face indicate or state that the payments to be made are in respect of gaming losses. That said, the Settlement Agreement clearly concerns and relates to the claims brought in the First Suit where gaming assertions had been made (but not yet established) by the Defendant. As I had observed earlier, the real issue before this court is whether (in the context of an application for summary judgment) the Defendant should be allowed or given another opportunity to raise the same (*unproven*) gaming issues that were supposedly settled by agreement. Is this a case where the court should adopt a holistic approach and look at the Settlement Agreement in the context of the alleged transactions as a whole so as to take a composite approach? If so, the fact that the characteristics of the alleged earlier transaction (the circumstances in which the debt arose that was the subject of the First Suit) is unclear and in real dispute must also be a relevant consideration as is discussed below.

Poh Soon Kiat v Desert Palace Inc [2010] 1 SLR 1129

6 1 *Poh Soon Kiat v Desert Palace Inc* [2010] 1 SLR 1129 ("*Poh Soon Kiat*") was a case where Desert Palace Inc (the respondent) had brought a suit in Singapore against the appellant in respect of which an application for summary judgment was made. The suit was based on a claim to enforce a foreign judgment obtained in 2001 in the State of California, USA. The Californian judgment had set aside a transfer of property by the appellant (on the basis of fraud) and had also ordered the property to be sold and for the sale proceeds to be made available to satisfy judgment debts owing to the Respondent obtained in 1999 (from the same court). The judgment obtained in 1999 was itself based on an earlier US District Court (Nevada) decision that was based on a gambling debt owed by the appellant to the respondent. The High Court in Singapore found for the Respondent on the basis that the 2001 Californian judgment was enforceable in Singapore and that there was no defence to the action. On appeal, Chan Sek Keong CJ surveyed the Singapore law and public policy on gambling and came to the conclusion (at [95]) that the introduction of casino gambling in Singapore under strict controls did not abrogate the public policy that was encapsulated in s 5(2) of the CLA. The Chief Justice continued (at [97] and [98]) that there was a clear difference between regulated casino gambling and unregulated gaming at large (including gambling on credit) and that "the existence of regulated gambling is not inconsistent with unregulated gambling and gambling on credit being against public policy in Singapore." That said, the Court of Appeal held (at [127]) that the 2001 Californian

judgment was not enforceable by way of a common law action as it was not a foreign money judgment. The Court of Appeal went on to observe (in *dicta*) however, that it appeared that s 5(2) CLA would also have barred the action since the action on the foreign judgment was based on an underlying cause of action concerning a gambling debt.

62 In coming to its decision, the Court of Appeal in *Poh Soon Kiat* referred to the earlier decisions of *Star City Pty Ltd (formerly known as Sydney Harbour Casino Pty Ltd) v Tan Hong Woon* [2002] 1 SLR(R) 306 ("*Star City*") and *Burswood Nominees Ltd v Liao Eng Kiat* [2004] 2 SLR(R) 436 ("*Burswood*"). In *Star City*, the Court of Appeal (at [30]) came to the view that Singapore (in line with the position in England) had departed from the historical position that gambling and gaming, especially on credit, was a social vice that had to be eradicated at all costs. Yong Pung How CJ at [30] expressed the view that:

> …[g]ambling *per se* is no longer considered to be contrary to the public interest and this accounts for the various forms of legalised gaming and gambling which currently exists in Singapore such as 4-D, Toto, the Big Sweep, the Singapore Turf Club, *etc*. Therefore there is no general principle of public policy in Singapore, against the recovery of money lent for the purposes of gambling abroad, so long if (*sic*) the transaction is indeed a genuine loan and one which is valid and enforceable according to that foreign law.

63 The latter statement may now need to be reassessed in the light of the *dicta* comments in *Poh Soon Kiat*. Nevertheless, it is worth noting that even in *Star City*, Yong Pung How CJ went on to affirm (at [31]) that what was objectionable "is courts being used by casinos to enforce gambling debts in the 'form' of loans" and that "the courts of justice must remain out of bounds to claims for moneys won upon wagers, however cleverly or covertly disguised." The important point to note is that the "distinction" touched on in the latter case between gaming debts (monies lost on wagers) and genuine loans to a borrower who uses the monies to gamble will doubtless require careful thought, even in those cases where the loan is valid and enforceable according to applicable foreign law.

64 In *Burswood*, the plaintiff was the operator of a licensed casino in Western Australia. The defendant had issued a cheque to the plaintiff in exchange for a chip voucher. Subsequently, the defendant lost the chips on the gaming tables and his cheque when presented for payment was dishonoured. The plaintiff obtained a default judgment in a Western Australian court. The issue before the Singapore court was whether the Western Australian judgment was registrable under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) ("RECJA"). Section 3(2)(f) of the RECJA prohibits the registration of a Commonwealth judgment if it was obtained in respect of a cause of action which for reasons of public policy could not be entertained by a Singapore court. The Court of Appeal in that case held that the plaintiff's claim was for money won upon a wager and that if the plaintiff had commenced an action in Singapore on the dishonoured cheque that action would have been barred by s 5(2) of the CLA. However, the Court of Appeal went to state that s 5(2) was not applicable to the Western Australian judgment. Instead, s 3(2)(f) was applicable and was decisive of the issue, the point being that an objection based on the latter required a higher threshold of public policy to be met. The Court of Appeal in *Burswood* (at [46]) was of the view that there were no public policy grounds militating against the registration of the Australian judgment which would offend a fundamental principle of justice or a deep rooted tradition of Singapore. In *Poh Soon Kiat*, a differently constituted Court of Appeal (at [94]) disagreed with the statement that gambling was no longer contrary to Singapore public policy. If that was the position, there would have been no need for such an extensive and detailed legislative and regulatory framework as set out in the CCA. Rather than repealing s 5 of the CLA, Parliament restructured s 5 so as to make ss 5(1) and (2) inapplicable to regulated gambling. Further, the Court of Appeal in *Poh*

Soon Kiat took pains to stress that the public policy objection encapsulated in s 5(2) CLA was not simply the saving of precious judicial resources. Broader public interests lay at the heart of the provision. The decision in *Burswood* was characterised as unsound since the cause of action upon which the Western Australian judgment was based was a gambling debt. Section 5(2) CLA applied to all gambling debts and was clear expression of Singapore public policy.

65 In the present case, the claim is not being brought by a casino against a patron who has incurred gaming losses at the casino tables. Taking the Defendant's pleaded case at its highest, what is being alleged is that the Plaintiff provided chips to his friends and business acquaintances to gamble at a casino in Singapore. Over time, the Plaintiff became indebted to the casino and sought to recover the "credit" that he had provided to these friends and associates. How the Defendant "fit" into the scheme was not entirely clear. The point is that if the First Suit had not been settled and had proceeded to a full trial, there would likely have been careful examination of the evidence to determine the facts (what was the relationship between Foo, the Plaintiff and Defendant; was it a genuine loan transaction or something else *etc*) and subsequently the law as applicable to gaming debts and loans. The question (broadly stated) before the court (as set out before) is whether having settled the First Suit, the Defendant can or should be allowed to raise the very same set of issues again as a means of undermining the Settlement Agreement.

Real Estate Consortium Pte Ltd v East Coast Properties Pte Ltd [2011] 2 SLR 758

66 *Real Estate Consortium Pte Ltd v East Coast Properties Pte Ltd* [2011] 2 SLR 758 ("*Real Estate Consortium*") concerned the question as to the degree of finality to be accorded to settlement agreements (in terms of preventing parties from re-opening issues supposed to have been settled). The case concerned disputes which had arisen from a convertible bond agreement between the plaintiff and the defendants ("the CBA"). About a year after the CBA was executed, the defendants were unable to repay the principal amount as a result of which the plaintiff by letter terminated the CBA. The defendants disputed the plaintiff's rights under the CBA. They also alleged that the CBA had been signed by the second defendant without fully understanding the terms that the CBA was a sham transaction, that the CBA was an unenforceable moneylending transaction with an exorbitant interest rate and that the CBA had wrongly terminated. Thereafter, the parties entered into negotiations to settle the dispute and, after an exchange of correspondence, an instalment re-payment schedule was agreed with four post-dated cheques being delivered to the plaintiff. Three of these cheques were subsequently dishonoured. The defendants' case was to raise similar points on the CBA (*ie*, that it was an act of moneylending, and that it was a sham *etc*) as well as an assertion that the settlement agreement was not valid as it had been entered into under economic duress. The plaintiff denied economic duress and claimed that the issues concerning the validity of the CBA were no longer relevant as they had been settled between the parties.

67 Andrew Ang J found (at [42]) that it was clear that the issues had been compromised by a settlement agreement between the parties. The legal question that arose was whether the settlement agreement had the effect of preventing the defendants from resurrecting the same issues again. The learned judge held that they were precluded, and stated at [53] that:

> … [w]here parties have agreed to resolve their dispute amicably by way of a validly formed settlement agreement, the settlement agreement alone governs the parties' legal relationship; the effect of the settlement agreement is to put an end to the issues previously raised by the defendants. This oft-stated principle has been regarded as self-evident as its rationale has seldom been adequately articulated.

68 Whilst the rationale may not have been often explained, there is little doubt that there is much

good sense in the principle. If an agreement was validly and properly entered into by way of compromising an action, the common intention of the parties must have been to compromise that action in accordance with the terms of the agreement. If the terms of the agreement make it clear that the settlement agreement was to exclusively govern the dispute and issues that had arisen then that should be it and neither side will ordinarily be allowed to renege from what had been agreed. If it is intended that some issues remain "live" (either generally or in certain circumstances) then this should be provided for in the agreement itself (although in some cases it may be that an appropriate term may be implied). Whether the basis for upholding the settlement agreement is contract or some form of estoppel (which Andrew Ang J at [58] in *Real Estate Consortium* expressed some doubt towards), there can be no doubting the good sense (and arguments of public interest) in the law upholding agreements freely entered into as part of the process of dispute resolution and in the interests of commercial certainty. Indeed, this was a point that was discussed in some detail by Andrew Ang J at [58] and [59] of *Real Estate Consortium*. Singapore cases cited by the learned judge as supporting this view include *Gay Choon Ing v Loh Sze Ti Terence Peter* [2009] 2 SLR(R) 332, *Lee Kuan Yew v Chee Soon Juan* [2003] 3 SLR(R) 8, and *Shunmugam Jayakumar v Jeyaretnam Joshua Benjamin* [1996] 2 SLR(R) 658.

69 That said, it must follow that, whilst the general rule is that the settlement agreement alone will govern the relationship between the parties, there will be a residue of cases where the settlement agreement *will not* have the effect of preventing the re-opening of disputes. The case cited for this proposition is the English Court of Appeal decision in *Binder v Alachouzos* [1972] 2 QB 151 ("*Binder*"). That was a case where a lender had commenced an action against the borrower for default in the repayment of loans. The borrower's defence was that the loans were unenforceable. Before the trial, the action was settled on terms that the borrower should make payment of a sum of money by way of instalments. It was agreed that the Moneylenders Act did not apply to the loan transactions. In that case, Lord Denning MR found that the dispute as to whether the lender was a moneylender had already formed the subject matter of a *bona fide* compromise agreement. It followed that the dispute could not be reopened unless the lender had taken "unfair advantage" of the borrower. One such instance given by Lord Denning was a case where the interest charged was so high that it was presumed to be harsh and unconscionable. But, and this is of some importance for the case at hand, Lord Denning also stated at 158 that:

> [o]n the other hand, it is important that the courts should enforce compromises which are agreed in good faith between the lender and borrower. If the court is satisfied that the terms are fair and reasonable, then the compromise should be held binding. For instance, if there is a genuine difference as to whether the lender is a moneylender or not, then it is open to the parties to enter into a bona fide agreement of compromise. Otherwise, there could never be a compromise of such an action. Every case would have to go to the court for final determination and decision. That cannot be right.

70 Andrew Ang J in *Real Estate Consortium* accepted that a compromise agreement was not an absolute bar to reopening of issues. Nevertheless, the learned judge rightly stressed at [61] that inasmuch as the court will not make a contract for the parties, that there was only *limited* scope for the court to determine whether the terms of the compromise was fair and reasonable. Examples given were cases where the prior issues were tainted by illegality, fraud, duress, undue influence or mistake. At the end of the day, Andrew Ang J found that the parties had intended to enter into the settlement agreement and that there was no basis for the claim that the agreement was entered into under economic duress. It was always open (at the time) for the defendants to have defended the claim and in any case the defendants had the benefit of independent legal advice throughout the settlement negotiations.

71 Whilst the relevance of *Real Estate Consortium* to the present case is clear, it is necessary to bear in mind that the latter was a case that went to trial and the decision reached only after the normal trial process was complete. *Real Estate Consortium* was not a case where the matter was determined on an application for summary judgment. The fact that there was a full trial which enabled Andrew Ang J to hold that even if he accepted (for the sake of argument) that the issues could be re-opened, the end result would have been the same. This is because the court in any case found (after trial) that there was no merit in the arguments that had been raised. There was no basis for the plea of mistake, nor was there evidence to show that the second defendant was inexperienced. The evidence that the CBA was a sham was not accepted as the evidence showed that the defendants regarded the plaintiff's financing as an investment in the property project. That being so, the allegation of moneylending was not made out. That said, it is clear that the learned judge's remarks and comments on the merit of the issues previously raised were by way of caution and that his main holding remains: that there is only limited room to reopen issues that have been included in a settlement agreement.

Application to the present case

72 Now that I have discussed a number of cases counsel cited to me, I now apply the legal principles to the facts of the present appeal.

73 As noted earlier, the Settlement Agreement in the present case was signed by both parties on 1 February 2013. The signatures were in the presence of two witnesses. Clause 3 of the Settlement Agreement states that:

> [s]ubject to the above, the parties agree that the Suit is fully and finally settled as between them. This Agreement is governed by and shall be construed in accordance with, the laws of Singapore.

74 The Suit referred to was identified in the opening paragraph of the agreement as "S733/2012/J". This, of course, is a direct reference to the First Suit discussed earlier.

75 On 5 February 2013, the solicitors for the Plaintiff sent a letter to the solicitors for the Defendant noting and setting out the terms of the Settlement Agreement of 1 February 2013. By this letter, the Plaintiff sought confirmation of the settlement and that, if the sums were not paid as provided for, the Defendant would become liable for all amounts not so paid. By a letter on the same date, the solicitors for the Defendant replied confirming the settlement including the provision that if the settlement payments were not paid as provided for, the Defendant would "forthwith become liable for all amounts not so paid and your client may enforce such obligation against him." It is clear and beyond dispute that the parties had taken independent legal advice by 5 February 2013. Indeed, the Defendant, in his first affidavit, makes express reference to the fact that he had given certain instructions on the settlement agreement to his solicitors. This suggests strongly that he had the benefit of legal counsel earlier and certainly by around the 1 February 2013.

76 Aside from having the benefit of legal counsel, there is no doubt that the Defendant had partly performed the Settlement Agreement by causing the transfer of the Firstlink Shares to the Plaintiff in performance of one of his obligations under the Settlement Agreement. Even though the transfer was late (occurring on 28 February 2013), the Plaintiff points out that at the time when the share transfer forms were delivered, there was no indication that this transfer was to meet obligations owed by friends of the Defendant. [note: 21] Indeed there is no evidence that the transfer was made under any form of protest. There is also no dispute that the Plaintiff performed his obligation under the Settlement Agreement by discontinuing the First Action.

77 The cash payments under the Settlement Agreement were due by 28 February 2013 and 31 March 2013. Both of these were not made. Letters of demand were sent by the solicitors for the Plaintiff to the Defendant on 5March 2013 and 10 April 2013. [note: 22]

78 On 17 April 2013, the solicitors for the Defendant replied to the letter of demand of 10 April 2013 as follows: [note: 23]

> …
>
> 2. We are instructed that our client cannot understand why your client insists on threatening legal action. We are instructed that fundamental to the settlement of Suit 733/2012/J was the understanding that our client would be transferring the sum of $330,000 to your client once he had collected the same from all the other parties indebted to your client. The circumstances of such indebtedness by such third parties have been expressed lucidly in the discontinued Suit 733/2012/J. You will agree that no other person was named or made a party to the settlement agreement executed upon the discontinuance of the aforesaid Suit as they were never parties to the action in the first place.
>
> 3. We are further instructed that despite our client's best efforts, these monies have yet to be collected for onward transmission to your client, the current predicament of which has already been made known to your client. Our client instructs that these other parties have indicated that they will be abl e to settle their indebtedness within the next sixty (60) days.
>
> …

79 In the Plaintiff's Affidavit in Reply dated 12 August 2013 ("LYK RA"), the existence of an informal oral agreement was denied. Points raised by the Plaintiff (aside from the fact that the Settlement Agreement was voluntarily entered into by the Defendant with assistance of legal advice) include the observation that the Defendant provided few details to substantiate or provide credence to the allegation that the debts were those of friends who had gambled with the Plaintiff's chips. The identity of the friends from whom the Defendant was supposed to attempt recovery of the debts was not revealed until the Defendant filed his reply affidavit on 24 July 2013 resisting Sum 3506 ("TVL-AF"). Even then only one person was named. The other friend was simply described as a "female friend." The explanation for the Defendant's reticence was that he was concerned that if he named the female friend that this would "sour" his relationship with her as well as worsen his relationship with the Plaintiff. [note: 24] The Defendant also states that he does not name these friends as he did not want to "drag them into the mud of litigation." [note: 25] Up to a certain point, the Defendant's apparent reticence to name the third party friends is perhaps somewhat understandable. The failure to provide details does not necessarily force the conclusion that the oral understanding was a fabrication. Nevertheless, this court is bound to note that by 5 February 2013, the Plaintiff and Defendant were in the midst of a serious dispute and that the Defendant must have been aware of the implications of the Settlement Agreement (taken on at face value). Given the terms of the Settlement Agreement and the history of the dispute (from the perspective of the Defendant), the importance of the alleged oral understanding is obvious. It is for this reason that the absence of details and supporting evidence for the oral understanding and the debts of the friends is a cause for some concern. Indeed, the Plaintiff's solicitors, by letter dated 18 April 2013 (in reply to the Defendant's solicitor letter of 17 April 2013), denied the allegation that there was some sort of understanding and noted that no particulars had been provided as to who these other parties were who were alleged indebted to the Plaintiff.

80 In LYK RA, the Plaintiff exhibited and made reference to a number of SMS messages exchanged between himself and the Defendant. The point that the Plaintiff sought to make was that nowhere in these messages is there any reference or suggestion that an oral understanding existed whereby the Defendant was to recover the debts from third party friends and to hand the same over to the Plaintiff. The SMS messages referred to were dated 21 January 2013, 28 February 2013, 1, 4 and 5 March 2013. Whilst the exhibited messages offer some support for the Plaintiff's position, this court is bound to note that only portions of the messages appear to be exhibited and there is no telling as to whether there are other SMS messages or emails *etc* which may be relevant.

81 In his grounds of decision, the AR's view was that there was simply no evidence to support the existence of the oral agreement which would allow the AR to place any weight on the assertion for the purposes of the application for summary judgment. The AR's comment that the Defendant had only made a "bare assertion" that there was some oral agreement is justified even if the court disregards the exhibited SMS chain of messages referred to above.

82 The conclusion that this court has come to is that the Defendant did freely enter into the Settlement Agreement of 1 February 2013 and as referred to in the exchange of letters dated 5 February 2013. There is no evidence to support the Defendant's assertion that the Settlement Agreement was subject to or governed by an unrecorded/undocumented oral contract or understanding. Even if there was some evidence of an oral understanding, the parol evidence rule would have to be considered. The alleged oral understanding is clearly inconsistent with the written terms of the Settlement Agreement. To be clear, this court is not deciding this appeal simply on the basis of the parol evidence rule. Instead, the decision is based on the view that the existence of the Settlement Agreement has been firmly established and that there is no basis for doubting its terms and obligations and subjecting performance to some informal, oral understanding which fundamentally alters what was expressly provided and for which there is no supporting evidence.

83 It follows that I am not satisfied that the Defendant has shown that leave to defend (unconditional or otherwise) should be granted on the basis of the alleged oral understanding or agreement referred to above. Instead, much will depend on whether the Defendant has demonstrated some other basis for attacking the Settlement Agreement. That basis is said to be based on the gaming/moneylending issues which arose in connection with the First Suit and which the Defendant now seeks to rely on so as to impugn the enforceability of the Settlement Agreement. I now turn to discuss this argument.

84 Taking the Defendant's pleaded case at its highest, the defence raised in the First Suit turned on the broad allegation that the Plaintiff had been running an unlicensed junket operation at Marina Bay Sands and thereby came within the ambit of the MLA and CLA. The debt/loan which the Plaintiff was claiming in the First Suit was said to have "arisen" out these gaming activities such that even if the Defendant owed the money, the claim was unenforceable. The Plaintiff asserts that the money owed derived from a debt which the Defendant owed to Foo and which had been paid by the Plaintiff on behalf of the Defendant. The Plaintiff denies that there is any connection between this and the alleged illicit junket operation. The positions taken by the parties in the First Suit are sharply conflicting. If the Defendant had succeeded at trial in showing that the monies were gambling debts arising in the course of an illicit junket operation, relying on the case law discussed earlier, this would have assisted the Defendant in trying to establish a defence at law. This court is not holding that on the basis of what was pleaded and asserted by the Defendant in the First Suit, the unlicensed moneylending defence would have succeeded as a matter of law if the First Suit had gone to trial. The key point is that at the time the First Suit was settled, it was *far from clear* as to whose version of events would be established at trial. Even if the Plaintiff was involved in some form of junket scheme, it was not clear as to what the connection was between the Defendant, Foo and the junket

operation. In short, the First Suit was settled at a point when there was a serious dispute as to whether the claim related to moneylending, junket operations and gaming losses. The fact that a claim for summary judgment in the First Suit was unlikely to succeed does not mean that the Plaintiff's claim or version of the events was flawed or inherently unbelievable. Indeed, the court is reminded that the Defendant did not in the First Suit take out an application for striking out. The fact that the Plaintiff agreed to settle the First Suit does not mean that the Plaintiff thereby admitted all the allegations and points of defence which were raised in the First Suit. It is also noted that the First Suit was for the sum of $730,000. The Settlement Agreement reached was for the *full* amount of the claim. What the Defendant had secured was agreement that the claim would be satisfied by means of a transfer of shares and two instalment payments of cash.

85 To be clear, if the First Suit was indeed a claim for recovery of sums owed by the Defendant in respect of gaming losses arising out of the junket operation (meaning that if this was admitted by the Plaintiff or if the evidence was clear beyond doubt), this court accepts that the Defendant may well have enjoyed the defence that he had asserted. If in *these* circumstances, the Plaintiff had entered into a Settlement Agreement, an arguable case might have been made that the Settlement Agreement was not "absolute" and that the same public policy objections to the First Suit carried through and tainted the Second Suit. The point, however, is these are not the circumstances in which the First Suit was settled. The Plaintiff has never admitted that the claim was in respect of gaming losses and would no doubt have disputed the applicability of the MLA and CLA if the case had gone to trial.

86 The court reminds itself of the decision of the English Court of Appeal in *Binder* referred to earlier. It will be recalled that in that case, Lord Denning MR found that the dispute as to whether the lender was a moneylender had already formed the subject matter of a *bona fide* compromise agreement. It followed that the dispute could not be reopened unless the lender had taken "unfair advantage" of the borrower. It also follows that there is huge difference between a settlement reached when there is a genuine dispute as to whether the lender is a moneylender and a case where the settlement agreement accepts or is founded on established unlicensed moneylending. In the same case, Phillimore LJ (at 159) commented:

> It is said that this court ought to look behind the terms drawn up to represent the agreement between the parties – an agreement freely negotiated and signed by all concerned. [Counsel] says that there are matters which cast an aroma of moneylending over the whole of these transactions … Speaking for myself, I think it is entirely plain that this was a bona fide compromise and that there is nothing in evidence here which could make this court say *with any confidence* that these were moneylending transactions, illegal transactions … The terms of the agreement are not to be described as colorable. The court ought to be very slow to look behind an agreement reached in circumstances as these…" [emphasis in italics added]

87 In a similar vein, the remarks of Roskill LJ in *Binder* at 160 are worth repeating:

> In my judgment it is the law of this country, as Lord Denning MR has said, where there is a bona fide compromise of an existing dispute and that compromise includes a compromise of what … is basically an issue of fact, namely whether or not there had been unlawful moneylending, especially where the compromise has been reached under the advice of counsel and solicitors, that that compromise is enforceable against the party seeking to repudiate it. Any other course would cause very great difficulty in the administration of justice. One example will suffice: subject to the sanction of the Court, a liquidator is entitled to compromise a dispute with debtors… What is he supposed to do if he is met by the defence that the debt or supposed debt arose from unlawful moneylending? Must he refuse to compromise? What is the court to do? Must the court

> refuse to sanction a compromise because it can always be reopened later … In such a case it seems to me clear that the court should encourage and when appropriate enforce any bona fide compromise arrived at, especially one arrived at under legal advice.

88 Returning briefly to the decision of Andrew Ang J in *Real Estate Consortium*, it will be recalled that the learned judge accepted that a compromise agreement was not an absolute bar to reopening of issues. That said, the Court rightly stressed that there was only *limited* scope for the court to determine whether the terms of the compromise were fair and reasonable. Examples given were cases where the prior issues were tainted by illegality, fraud, duress, undue influence or mistake. It follows that where the suit that was settled/compromised was *clearly* tainted by illegality, the settlement agreement might itself be affected by the illegality. The position is different, however, where there is a *genuine dispute* as to whether there is moneylending or gaming or some illegality that affects the original claim. When there is a *genuine dispute* as to whether an illegality defence might have applied in the previous case, then, there may be a greater argument that any settlement between the parties would be a truly *bona fide* one because of parties' differing legal positions.

89 I pause now to take stock and emphasise the principles of law, and propose a suitable framework to analyse them in. Drawing from the cases I have discussed above, I find that these principles are helpful in deciding whether or not a party should be allowed to impugn a settlement agreement:

(a) Where parties have agreed to resolve their dispute amicably by way of a validly formed settlement agreement, the settlement agreement *alone* governs the parties' legal relationship in the absence of the above vitiating factors (applying *Real Estate Consortium*);

(b) Because the settlement agreement *alone* governs the parties' legal relationship, *prima facie*, parties should not be allowed to rely on anything outside of this legal relationship in attempting to impugn the settlement agreement. This would mean any disputed legal issues (supposedly settled) would have no, or at the most little, bearing on the legality or formation of the settlement agreement.

(c) A settlement agreement is ultimately premised on the law of contract. There is a *limited* scope for the court to determine whether the terms of the compromise are fair and reasonable in deciding whether the settlement agreement should not be enforced. This limited scope includes grounds by which normal contracts are usually challenged, such as because of duress, illegality *etc*.

(d) Therefore, a party arguing to set aside or challenge the settlement agreement must satisfy the court that such grounds exist, before the settlement agreement will be set aside.

90 To address the issue raised in this case directly, whether or not the Defendant can "rely" on the illegality defence raised in the First Suit, is therefore somewhat of a misleading question. Because the Settlement Agreement now purely governs the legal relationship between the parties, technically, the Defendant is not allowed to "re-open" the issues raised in the First Suit. However, since the facts leading to any alleged illegality would, in most cases, be essentially the same set of facts leading to the legal issues raised in the First Suit, the court must look at those set of facts (as alleged and contested) to determine whether or not the Settlement Agreement is ultimately tainted by illegality. The burden of proof, therefore, must still lie with the party resisting the enforcement of a settlement agreement, in showing how the settlement agreement was premised on circumstances which would afford him the defence of illegality, such that the court will not enforce the settlement agreement. In this way, there is no "white-washing" of any illegality as the court must still look at what will be most

of the time the same set of facts.

91 Applying these principles to the case at hand, given the Settlement Agreement between the parties, it will *prima* facie govern the legal relationship between the parties. The question that lies before the court is whether the Defendant has shown that the Settlement Agreement was premised on illegal circumstances, or that the Plaintiff has taken an "unfair advantage" such that the Settlement Agreement should not be enforced. As to the point of illegality, all the Defendant has done is to rely on essentially the same facts and arguments which were in issue and dispute and raised in the First Suit, and nothing more. The conclusion that this court has come to is that there was a real dispute as to whether the claim was essentially for gaming debts and so caught by the MLA and CLA. These are the circumstances in which the Settlement Agreement was entered into, and based on the arguments and the evidence before me alone, I am not satisfied that the Defendant has shown that the Settlement Agreement was tainted by illegality.

92 Since the Defendant has failed to show how the Settlement Agreement is tainted by illegality, it remains for this court to investigate whether the Plaintiff had in some way taken "unfair advantage" of the Defendant (applying *Real Estate Consortium*). Factors which I have taken note of in reaching my decision on this include the following:

(a) That the Defendant accepts that he had voluntarily entered into the Settlement Agreement (see TVL-AF at [54] where the Defendant states that he voluntarily signed the Settlement Agreement but adds that the agreement was primarily premised on an illegal gaming debt).

(b) That the language and meaning of the wording of the Settlement Agreement is clear.

(c) That the Defendant had the benefit of legal counsel. At the very least, when the letters were exchanged by the parties solicitors on 5 February 2013 there can be no doubt that the Defendant had engaged counsel on the matter.

(d) That the Defendant had in a sense partly performed the Settlement Agreement by transferring the Firstlink shares (albeit late).

(e) That the Plaintiff did perform his side of the agreement by discontinuing the First Suit.

93 I also take into consideration the AR's comments in granting the Defendant conditional leave to defend, where he described the defence of unlicensed moneylending as being "shadowy" in nature. If by this the AR was referring to the First Suit, it must follow that the Plaintiff would have been entitled to settle the First Suit on the terms as set out in the Settlement Agreement. Indeed, it is noted that the AR went on to state that he granted conditional leave because the evidence embodied in the acknowledgment note and cheque image fell just short of what was required to rebut the assertion of unlicensed moneylending. The AR may well be justified in taking this view. Nevertheless, the point remains that there was at the very least a genuine dispute in the First Suit as to whether there was unlicensed moneylending that affected the Plaintiff's claim. The "shadowy" nature of the defence in the First Suit provides the context for what appears to be a legitimate settlement agreement.

94 Given the points I have observed and the context behind the Settlement Agreement, there is no basis for an argument that the Defendant has been unfairly taken advantage of in coming to the Settlement Agreement. As in *Real Estate Consortium*, there is no evidence that the Plaintiff subjected the Defendant to any form of economic duress and that, on the facts, it is clear that the Defendant could have chosen to defend the First Suit by trying to establish his allegations of gaming, junket

operations and moneylending. Whether he would have succeeded is speculative. What is not speculative is that the Defendant entered into the Settlement Agreement knowing full well what the written terms meant.

95 That being so, the Plaintiff is entitled to summary judgment since there is no reason to conclude that the Settlement Agreement was tainted by illegality, unfair or unconscionable.

Conclusion

96 For the sake of completeness, it is noted that in the Second Suit, the Defendant by Summons No 4218 of 2013 applied to strike out the Plaintiff's claim for non-satisfaction of the Settlement Agreement. The AR heard the striking out summons together with the application for summary judgment. The application to strike out was dismissed and the Defendant was granted conditional leave to defend. There was no appeal against the dismissal of the striking out application. On the question of costs, the Plaintiff in the written submissions sought an award of costs on a full indemnity basis. This was because the Defendant had attempted to raise irrelevant considerations in challenging the validity of the Settlement Agreement. These considerations were said to be the issues on unlicensed moneylending as well as the attempt to impugn the written agreement by means of the alleged oral understanding. Whilst I have allowed the appeal, I do not agree that this is an appropriate case for the award of indemnity costs and decline to exercise the discretion to award costs on that basis.

97 It follows that the appeal is allowed. Summary judgment in the sum of $330,000 is awarded to the Plaintiff together with interest and costs, to be agreed on or taxed.

[note: 1] See Plaintiff's (Appellant's) skeletal submissions for RA 310 of 2013 dated 7 October 2013 at [46] ("PSK").

[note: 2] See PSK at [47].

[note: 3] See Defendant's (respondent) reply affidavit dated 24 July 2013 resisting Sum 3506 ("TVL-AF") at [28].

[note: 4] See TVL-AF at [26] and [28].

[note: 5] See Statement of Claim dated 19 April 2013 ("SOC") at [4].

[note: 6] See SOC at [6].

[note: 7] See TVL-AF at [30].

[note: 8] See TVL-AF at [4].

[note: 9] See TVL-AF at [9].

[note: 10] See PSK at [35] – [38].

[note: 11] See Plaintiff's 1st Affidavit dated 10 July 2013 ("LYK-AF") at exhibit LYK-2.

[note: 12] See LYK-AF at [12].

[note: 13] See SOC at [6].

[note: 14] See PSK at [49(5)].

[note: 15] See LYK-AF at [15].

[note: 16] See TVL-AF at [22].

[note: 17] *Infra.*

[note: 18] See TVL-AF at [23] and [24].

[note: 19] See TVL-AF at [25].

[note: 20] See TVL-AF at [27] and [28] and also PSK at [20].

[note: 21] See LYK-AF [27] to [34].

[note: 22] See LYK-AF at exhibit LYK-3, pp 37 – 41.

[note: 23] See TVL-AF at p 48.

[note: 24] See TVL-AF at [57].

[note: 25] See TVL-AF at [46].