Burswood Nominees Ltd (formerly Burswood Nominees Pty Ltd) v Liao Eng Kiat
[2004] SGHC 64

Case Number : OS 1217/2003/F

Decision Date : 01 April 2004

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Sharon Tay (Donaldson and Burkinshaw) for applicants; Jeanny Ng (Jeanny Ng) for respondent

Parties : Burswood Nominees Ltd (formerly Burswood Nominees Pty Ltd) — Liao Eng Kiat

Betting, Gaming and Lotteries – Wagering contracts – Whether foreign wagering contract valid under foreign governing law enforceable in Singapore – Section 5 Civil Law Act (Cap 43, 1999 Rev Ed)

Civil Procedure – Judgments and orders – Enforcement – Whether foreign judgment should be registered in Singapore – Public policy considerations and doctrine of comity of nations – Order 67 Rules of Court (Cap 322, R 5, 1997 Rev Ed), ss 3, 5 Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed)

1 April 2004

Lai Siu Chiu J:

The facts

1 Burswood Nominees Ltd (the applicants) are a company incorporated in Western Australia, located at Great Eastern Highway, Victoria Park, Western Australia and are trustees of the Burswood Property Trust which owns the Burswood International Resort Casino ("the Casino"). The Casino holds a gaming licence issued pursuant to s 21 of the (Western Australia) Casino Control Act 1984. Liao Eng Kiat (the respondent), according to his affidavit filed on 25 August 2003, was a patron of the Casino, having visited it on no less than eight occasions in 1997/1998. The respondent resides at 43 Woo Mon Chew Road, Singapore.

2 On or about 20 November 1997, the respondent signed a cheque cashing facility agreement ("the agreement") with the Casino in respect of the presentation of cheques drawn by the respondent. Under the terms thereof, it was agreed that:

(a) all cheques cashed by the respondent under the agreement up to the limit of A$50,000 at any one time, would be met when presented for payment;

(b) in respect of any cheques cashed by the respondent, the applicants were entitled to charge interest at a rate of 18% per annum on the amount of any cheque drawn by the respondent and which remained uncleared after seven days from the date of first dishonour;

(c) the law of Western Australia was the choice of law and the respondent voluntarily submitted himself to the non-exclusive jurisdiction of the Western Australian courts in relation to any proceedings to be instituted by the applicants.

3 According to the applicants, the respondent signed and delivered to them a cheque numbered 676843 ("the cheque") on or about 19 October 1998, drawn upon United Overseas Bank Limited, Changi Branch ("UOB") in the sum of S$52,900. On receipt of the cheque, the applicants

provided the respondent with a cheque credit slip in the amount of A$50,000 ("the sum"). The plaintiff exchanged the cheque credit slip for gaming chips worth A$50,000, gambled and lost the entire sum at the Casino.

4 The applicants presented the cheque to UOB for payment in late October 1998 *via* Thomas Cook through Hongkong Bank. On or about 2 November 1998, UOB dishonoured the cheque for the reason "Refer to Drawer" and returned it to Hongkong Bank.

5 The applicants sued the respondent in the Supreme Court of Western Australia on the dishonoured cheque and for contractual interest (from 19 October 1998). Notice of the writ of summons was effected on the respondent at his Singapore residence on 4 October 2001, after the Western Australian courts had granted leave to the applicants on 7 September 2001 to issue a writ for service outside jurisdiction.

6 The respondent failed to enter an appearance to the proceedings within the 35-day deadline specified in the notice of the writ of summons. Consequently, on 13 December 2001, the applicants obtained judgment in default of appearance against the respondent in the sum of A$78,331.50 plus costs to be taxed. The costs were subsequently taxed at A$2,765.28 on 10 March 2003.

7 On 2 May 2003, the applicants obtained a certificate from the Western Australian courts pursuant to s 146(2)(b) of the Supreme Court Act 1935 and s 14 of the Foreign Judgments (Reciprocal Enforcement) Act 1963 of Western Australia. The Registrar of the Supreme Court of Western Australia certified a copy of the judgment ("the Judgment") in the judgment sum of A$78,331.50 and costs of A$2,765.28.

The applications

8 On 25 August 2003, the applicants applied under this originating summons to register the Judgment (in the total sum of A$81,096.78) in Singapore, pursuant to O 67 of the Rules of Court (Cap 322, R 5, 1997 Rev Ed) read with ss 3 and 5 of the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) ("the Act"). The originating summons was granted an order in terms by the Registrar on 26 August 2003.

9 On 8 October 2003 the respondent applied by way of Summons in Chambers No 6341 of 2003 ("the respondent's application") to set aside the order of court dated 26 August 2003 and the registration of the Judgment.

10 In the affidavit filed in support of the respondent's application, the respondent:

(a) did not deny that he gambled at the Casino. He went further to say that he visited the Casino using its complimentary scheme whereby, depending on turnover and the time he spent gambling and the amount in each bet he placed, he would be reimbursed for his airfares, food and accommodation, by the Casino. He deposed there were other schemes operated by the Casino such as "play now pay later".

(b) admitted signing the agreement on or about 20 November 1997 in order to obtain credit facilities for gambling, but could not recall giving the cheque to the Casino. He could only remember giving a pre-signed blank (save for the payee's name) and undated cheque to the Casino in exchange for a voucher for A$50,000, on 20 November 1997.

(c) deposed he then presented the voucher, together with his membership card of the

Casino, to the supervisor at the gaming table who, after verifying his credit limit, advised the croupier to hand the respondent gaming chips worth A$50,000. At that gambling session, the respondent lost all the credit of A$50,000.

(d) deposed that based on legal advice he had received, the agreement dated 20 November 1997 was a contract by way of gaming or wagering and is null and void under the current s 5(1) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("the CLA").

(e) averred that the applicants' course of action cannot be entertained under Singapore law for reasons of public policy and the Judgment debt cannot be enforced. The court's time should therefore not be wasted by registering the Judgment in Singapore.

11 In reply to the respondent's affidavit, the applicants filed an affidavit by its credit manager Roger J L Lewis ("Lewis") refuting the respondent's allegations. Lewis denied that credit was extended to the respondent for gaming purposes. He pointed out that the Casino was prohibited (under the schedule to the Casino (Burswood Island) Act 1985 (Western Australia) from:

(a) accepting a credit wager from any person;

(b) making a loan to any person;

(c) providing cash or chips to any person in respect of a credit card transaction; and

(d) extending credit in any form to any person.

12 Lewis explained that the agreement entered into by the applicants and the respondent was not a credit facility. It was a facility by which a patron provided the applicants with a cheque in return for a voucher which could be exchanged for gaming chips. The cheque given in exchange for the voucher was the payment of the amount due to the applicants. Lewis deposed that on or about 19 October 1998, the respondent was at the Casino, made use of the facility and delivered the cheque to the applicants in exchange for a voucher in the sum of A$50,000. The cheque amount of S$52,900 was the equivalent of A$50,000 at the then prevailing exchange rates. Lewis revealed that the respondent had written to the applicants' Singapore office on 28 December 1998 asking for time until end February 1999 in which to pay the "advances".

13 On 22 October 2003 the learned assistant registrar dismissed the respondent's application. The respondent appealed against the dismissal by way of Registrar's Appeal No 378 of 2003 ("the Appeal") which came up for hearing before me on 5 November 2003. I dismissed the Appeal and the respondent, with leave granted by an order of court dated 6 January 2004, has now filed a notice of appeal (in Civil Appeal No 6 of 2004) against my decision. A stay of execution of my order was also granted on terms, pending the outcome of the respondent's appeal.

The submissions

14 I did not have the benefit of reading the written submissions which counsel for the respondent tendered at the hearing below. Although the notes of arguments of that hearing recorded that she undertook to file her submissions, she did not do so. Neither did counsel file the written submissions which she tendered before me.

15 As I recall, the gravamen of the respondent's case was *Star City Pty Ltd v Tan Hong Woon* [2001] 3 SLR 206 which decision was affirmed on appeal (see report at [2002] 2 SLR 22). In that

case, the plaintiffs operated a licensed casino in Sydney. The defendant patronised the casino and gambled using the same *modus operandi* as in this case. He signed a cheque cashing facility agreement with the casino and handed over his personal cheques in exchange for gaming chips equivalent to the amounts stated in his cheques. If the defendant did not have his own cheques to hand over to the casino, the latter provided him with "house cheques" for his signature. Such house cheques are recognised by many banks in Australia and are printed in a format pre-approved by the Casino Control Authority; the printed details included the patron's name, his bank and account number. It was a term of the facility that disputes relating to it or to cheques presented or cashed thereunder were subject to the laws of New South Wales.

16 The plaintiffs' claim against the defendant was for the balance sum of A$194,840. He had utilised the facility offered by the plaintiffs and handed over five house cheques, each in the amount of A$50,000, in exchange for gaming chips. The defendant gambled and lost A$250,000 over three days. When the house cheques were presented to the defendant's bank for payment, they were dishonoured due to insufficiency of funds. The plaintiffs sued, after the defendant paid A$55,160 and then refused to pay the balance.

17 The trial judge dismissed the plaintiffs' claim, holding it was a sum of money won by the casino on a wagering contract and was irrecoverable under s 5(1) of the CLA. The plaintiffs appealed unsuccessfully to the Court of Appeal. In dismissing their appeal, the appellate court, *inter alia*, held:

> (a) Recovery turns upon the characterisation of the transaction in question. An action on a loan will succeed if the loan is valid by its governing law. This is in contradistinction to the other principle contained within s 5 of the CLA that a wagering contract which is valid by its governing law is valid in Singapore, but no action lies in Singapore to recover any sum of money won on such a contract;
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> (b) There is no general principle of public policy in Singapore against the recovery of money lent for the purposes of gambling abroad, so long as the transaction is a genuine loan which is valid and enforceable according to that foreign law. However, it is contrary to local public policy for the courts to be used by casinos to enforce gambling debts disguised in the form of loans. Valuable court time and resources that can be better used elsewhere are wasted on the recovery of such unmeritorious claims. The courts of justice must remain out of bounds to claims for moneys won upon wagers, however cleverly or covertly disguised (adopting the decision in *Star Cruise Services Ltd v Overseas Union Bank Ltd* [1999] 3 SLR 412).

The Court of Appeal distinguished *Las Vegas Hilton Corp v Khoo Teng Hock Sunny* [1997] 1 SLR 341 where Chao Hick Tin J (as he then was) allowed the plaintiff casino to recover approximately US$1.6m lent to the defendant to gamble, which he lost and did not repay (in full).

18 The applicants' counter-argument was to distinguish *Star City Pty Ltd v Tan Hong Woon* from this case. Their counsel pointed out that the central issue in this case is whether registration of the Judgment under the Act would be against public policy in Singapore. Contrary to the respondent's argument, counsel for the applicants contended that her clients are not attempting to enforce gambling debts but to enforce a genuine debt owing by the respondent. Further, the cases relied on by counsel for the respondent (*Star City Pty Ltd v Tan Hong Woon*, *Star Cruise Services Ltd v Overseas Union Bank Ltd* and *Quek Chiau Beng v Phua Swee Pah Jimmy* [2001] 1 SLR 762) are distinguishable on their facts. Moreover, they did not concern applications made under the Act.

19 Counsel for the applicants submitted that the basis of registration or enforcement of foreign judgments is the doctrine of comity of nations. It is also founded on the doctrine of obligation in that

the judgment of a court of competent jurisdiction over a defendant imposes a duty or obligation on that defendant to pay the sum for which the judgment is given, which the registering court is bound to enforce. Registration of the Australian judgment would give effect to the Act which encompasses the doctrines of comity and obligation.

20 Counsel urged the court to follow the decision in *The Aspinall Curzon Ltd v Khoo Teng Hock* [1991] 2 MLJ 484 where the Malaysian High Court in Kuala Lumpur allowed the registration of a UK judgment obtained by an English casino against the defendant. (I believe the defendant is the same defendant in *Las Vegas Hilton Corp v Khoo Teng Hock Sunny*.) The Malaysian court held that as the cheques issued by the defendant were in exchange for cash and gaming chips for the purpose of gambling at a licensed casino, which was not unlawful in England, the enforcement of the UK judgment could not be considered as being against the public policy of Malaysia. She also referred to Canadian cases in the same vein (*Auerbach v Resorts International Hotel Inc* (1991) 89 DLR (4th) 688; *Boardwalk Regency Corp v Maalouf* (1992) 88 DLR (4th) 612 and *MGM Grand Hotel Inc v Kiani* [1998] 5 WWR 118).

21 The alternative argument propounded by counsel for the applicants was that until the cheque was honoured, the applicants' voucher handed to the respondent represented a genuine short-term loan extended to the respondent for gambling, which is allowed under the Casino Control Manual, a regulation issued in accordance with the gaming laws of Western Australia. Such genuine loans are not contrary to Singapore public policy and are enforceable in Singapore.

The decision

22 I rejected the respondent's arguments as having no merit whatsoever. There are several features in this case which distinguished it from *Star City Pty Ltd v Tan Hong Woon*. Firstly, the applicants did not make their claim in the Singapore courts. Their claim (quite properly) was made in the Western Australian courts in compliance with the jurisdiction clause in the agreement. Having obtained a valid judgment outside Singapore, the applicants intended to register it in Singapore for purposes of enforcement. Secondly, the appellate court in *Star City Pty Ltd v Tan Hong Woon* specifically held ([17(b)] *supra*) that it is not against the general principle of public policy in Singapore to allow recovery of money lent for the purposes of gambling abroad, so long as the transaction is a genuine loan which is valid and enforceable according to that foreign law.

23 Counsel for the respondent had relied heavily on *Star City Pty Ltd v Tan Hong Woon* for her submission that public policy (and s 5 of the CLA) disallows a Singapore court from lending a helping hand to casinos to recover gambling debts. Otherwise, she argued, overseas casinos would be coming to Singapore to recover gambling debts owed by Singapore gamblers. The converse argument is also true – it would equally be against public policy for Singapore gamblers to gamble abroad with impunity safe in (and encouraged by) the knowledge that upon their return to Singapore, they would not have to pay the debts they thereby incurred. In this regard, it would be useful to refer to the following extract (at 693) from *Auerbach v Resorts International Hotel Inc* where the Quebec Court of Appeal (*per* Mailhot J) echoed my sentiments:

> In my view, it would be quite contrary to public policy if Quebec became a refuge for gamblers who could keep winnings from a gaming or betting activity yet refuse to pay debts they had previously contracted and acknowledged by signing some cheque or credit note.

24 It would be appropriate at this juncture to look at s 5 of the CLA; it states:

> (1) All contracts or agreements, whether by parol or in writing, by way of gaming or

wagering shall be null and void.

(2) No action shall be brought or maintained in the court for recovering any sum of money or valuable thing alleged to be won upon any wager or which has been deposited in the hands of any person to abide the event on which any wager has been made.

What is the actual prohibition contained in s 5? As was held by Chao J in *Las Vegas Hilton Corp v Khoo Teng Hock Sunny* at [54] and [55]:

At common law gaming is not *per se* illegal; neither is borrowing or lending money for gaming immoral or unlawful at common law. Section 6 [now s 5 of the CLA] does not render gambling illegal. All that it says is that a wagering contract is void and you cannot sue on it; neither can you sue to recover any wagering prize. …

The fact that if the present contract between the parties had been governed by Singapore law the contract could be invalid or void (under s 6 of the Civil Law Act) does not mean that it, being governed by Nevada law and valid under that law, may not be enforced in Singapore.

25 The Court of Appeal in *Star City Pty Ltd v Tan Hong Woon* agreed with Chao J's ruling that as the credit facility extended by the plaintiff casino was enforceable and valid as a loan in Nevada, it fell outside the scope of s 5(2) of the CLA altogether. The same reasoning was adopted by Choo Han Teck JC in *Loh Chee Song v Liew Yong Chian* [1998] 2 SLR 641.

26 The Court of Appeal in *Star City Pty Ltd v Tan Hong Woon* further held that s 5(2) is a procedural provision which applies whenever foreign causes of action are being enforced in Singapore. It added (at [32]) that the operation of s 5(2) of the CLA merely *negatives the enforcement but not the validity* of gaming contracts.

27 Section 5 of the CLA is *in pari materia* to s 18 of the (UK) Gaming Act 1945. *Dicey & Morris on The Conflict of Laws* (13th Ed, 2000) vol 2 at para 33R–434 states the following rule (Rule 199):

(1) A wagering contract which is valid by its governing law is valid in England, but no action lies in England to recover any money won on such a contract.

(2) A cheque drawn on an English bank and given by way of security for money won by gaming or betting on games or for money lent for gaming or betting, is deemed to have been given for an illegal consideration. Hence, an action in England on the cheque will fail, unless it has been negotiated to a holder in due course.

(3) But an action on the loan itself will succeed if the loan is valid by its governing law.

The authors then set out the following principles (at para 33-435):

(1) An English statute which makes wagering contracts void applies only to contracts governed by English law.

(2) An English statute which makes wagering contracts unenforceable, *ie* forbids the bringing of an action on the contract, applies to all actions brought in an English court on wagering contracts, irrespective of the law applicable to them.

(3) English law governs the validity of a negotiable instrument, *eg* a cheque, payable in England but issued or negotiated by way of conditional payment of, or security for, a debt arising

> from a foreign wagering contract.

And added at paras 33-436 and 33-437:

> Section 18 of the Gaming Act 1845, makes wagering contracts null and void. It also forbids suits being brought to recover money won on wagers. It is, therefore, a statute which deals both with the validity and with the enforceability of such contracts. The validity of a foreign wagering contract is not affected by this statute, but, though valid, it cannot be sued upon in an English court. Being part of the *lex fori*, the second, procedural part of the section relieves the court "of the duty of adjudicating on foreign wagering contracts which by the ordinary rules of private international law would escape invalidation by the first part." [quoting Lord Radcliffe's judgment at 579 from *Hill v William Hill (Park Lane) Ltd* [1949] AC 530]
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> … The Act of 1845 cannot be interpreted as rendering null and void wagering contracts governed by foreign law (though it makes them unenforceable).

28 The test really is to ask the question: Was the principal judgment sum a loan from the applicants to the respondent to enable him to gamble at the Casino and which the respondent purportedly repaid with the cheque? I am of the view the answer is an emphatic *yes*. In such an event, public policy does not disallow the applicants from registering their judgment in Singapore under the Act. It would be a different consideration altogether had the facts revealed that the respondent gambled, lost and purportedly paid the Casino for his losses with the cheque, which was subsequently dishonoured.

29 It bears remembering that the respondent had admitted the applicants' claim, by his letter dated 28 December 1998, and only asked for time to pay "the advances". In fact, his prolongation of these proceedings bought him even more time (except that it appears he has changed his mind in the interval about paying the claim).

30 The doctrine of comity of nations is not something courts in Singapore should take lightly. It is not within the purview of a Singapore court to question the legality of a judgment obtained in a court of competent jurisdiction. The applicants should be allowed to register in Singapore the Judgment granted by the Western Australian courts so as not to send the wrong signal to local gamblers. Hence, I dismissed the respondent's appeal.

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