Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace)
[2009] SGCA 60

Case Number : CA 113/2008, SUM 5512/2008, 1309/2009, 1312/2009

Decision Date : 08 December 2009

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Chou Sean Yu, Loo Ee Lin and Tan Yee Siong (WongPartnership LLP) for the appellant; Foo Maw Shen, Daryl Ong and Ng Hui Min (Rodyk & Davidson LLP) for the respondent

Parties : Poh Soon Kiat — Desert Palace Inc (trading as Caesars Palace)

Betting, Gaming and Lotteries

Civil Procedure

Conflict of Laws

Contract

Limitation of Actions

Statutory Interpretation

8 December 2009 Judgment reserved.

Chan Sek Keong CJ (delivering the judgment of the court):

Introduction

1 This is an appeal against the decision of the High Court judge ("the Judge") in Registrar's Appeals Nos 77 and 78 of 2008 (see *Desert Palace Inc v Poh Soon Kiat* [2009] 1 SLR 71 ("the GD")). The Judge had reversed the decision of the assistant registrar ("the AR"), who had dismissed an application for summary judgment by the respondent in this appeal, Desert Palace Inc ("the Respondent"). The Respondent is the plaintiff in the originating suit, *ie*, Suit No 670 of 2007 ("the Singapore Action"), which is a common law action to enforce in Singapore what we shall hereafter refer to as "the 2001 California Judgment", *viz*, the judgment dated 9 November 2001 of the Superior Court of the State of California for the County of Santa Clara ("the Santa Clara Superior Court").

2 The Judge held that the 2001 California Judgment was enforceable in Singapore by way of a common law action (*viz*, the Singapore Action), and that such an action was not barred by either s 5 of the Civil Law Act (Cap 43, 1999 Rev Ed) ("the CLA") or s 6(1) of the Limitation Act (Cap 163, 1996 Rev Ed) ("the LA").

Background facts

3 The Respondent operates a casino in Las Vegas, Nevada, known as Caesars Palace. The appellant, Poh Soon Kiat ("the Appellant"), was a patron of the casino on various occasions between 1992 and 1998. Sometime during that period, he obtained credit from the Respondent amounting to US$2m in order to gamble. In exchange for the chips to gamble, the Appellant signed ten "markers" (also known as "cheques") on the understanding that, if he paid up whatever losses he incurred, the

markers would be returned to him for destruction. If, however, he failed to redeem the markers, they would be retained as proof of the debt which he owed to the Respondent. The Appellant gambled and lost the US$2m worth of gambling chips, but failed to pay up.

4 In 1999, the Respondent commenced Case No A 390420 in the District Court for Clark County, Nevada, to recover the US$2m owed by the Appellant. On 29 March 1999, the Respondent obtained a default judgment against the Appellant for the sum of US$2m ("the 1999 Nevada Judgment"). On 2 June 1999, in Case No CV 782287 in the Santa Clara Superior Court, the Respondent obtained another default judgment ("the 1999 California Judgment"). This default judgment was based on the 1999 Nevada Judgment, and was for a total sum of US$2,453,126.33 plus post-judgment interest at the statutory rate of 10% per annum.

5 Subsequently, the Respondent discovered that the Appellant had, on 11 February 1999, transferred his one-third share in a property in California ("the Property") to Surepath Development Limited ("Surepath"), a British Virgin Island company. On 14 April 2000, the Respondent and Sheraton Desert Inn Corporation ("Sheraton"), a casino operator that had also obtained a judgment against the Appellant in 1999 ("the Sheraton Judgment"), commenced Case No CV 789130 in the Santa Clara Superior Court to set aside the Appellant's transfer of his one-third share in the Property (hereafter referred to as the Appellant's "interest in the Property" for short) on the ground that it was a fraudulent conveyance under the law of California. On 9 November 2001, judgment in default – *ie*, the 2001 California Judgment – was granted to the Respondent and Sheraton. Specifically, the 2001 California Judgment stated that:

(a) the transfer of the Appellant's interest in the Property to Surepath was to be set aside;

(b) the Appellant's interest in the Property was to be sold and the proceeds applied in part or full satisfaction *pro rata* of the 1999 California Judgment and the Sheraton Judgment; and

(c) if the sale proceeds were insufficient to satisfy both the 1999 California Judgment and the Sheraton Judgment in full, the Appellant was to remain liable for the shortfall.

A total of US$130,119.35 was recovered from the sale of the Appellant's interest in the Property and paid *pro rata* to the Respondent and Sheraton, leaving a balance of over US$4m (inclusive of accrued interest) due and owing to the Respondent.

6 On 19 October 2007, the Respondent commenced the Singapore Action against the Appellant based on the 2001 California Judgment to recover the sum of US$4,378,927.63. On 8 January 2008, the Respondent applied via Summons No 72 of 2008 ("SUM 72/2008") for summary judgment for the amount claimed.

7 In response, on 15 January 2008, the Appellant filed an application (*viz*, Summons No 189 of 2008 ("SUM 189/2008")) for the Singapore Action to be either struck out under O 18 r 19 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) or dismissed pursuant to O 14 r 12 should certain questions of law be determined in his favour. The questions raised for the decision of the court in SUM 189/2008 were as follows:

(a) whether the Respondent's claim arose out of an agreement by way of gaming or wagering, which agreement was null and void under s 5(1) of the CLA;

(b) whether, in the alternative, the Respondent's claim was for the recovery of a gambling debt, which claim was unenforceable by reason of s 5(2) of the CLA; and

(c) whether the Respondent's claim was barred by the limitation period set out in s 6(1) of the LA as more than six years had elapsed since the Respondent's cause of action accrued.

The decision of the AR

8 The AR dismissed the Respondent's application for summary judgment (*vis-à-vis* SUM 72/2008) and struck out the Singapore Action (*vis-à-vis* SUM 189/2008). He held that the Singapore Action, being a common law action to enforce a foreign judgment, was essentially an action based on "an implied contract by the judgment debtor to pay the judgment debt"[note: 1] (citing the High Court's decision in *Westacre Investments Inc v Yugoimport-SDPR* [2007] 1 SLR 501 ("*Westacre Investments*") (as an aside, we should mention that this particular ruling of the High Court was affirmed by this court in *Westacre Investments Inc v The State-Owned Company Yugoimport SDPR* [2009] 2 SLR 166, although the High Court's decision was ultimately reversed on other grounds)). In the AR's view, a common law action on a foreign judgment would be time-barred under s 6(1)(*a*) of the LA after the expiry of six years from the date of accrual of the cause of action, that date being "the date of the judgment in question as that [was] the date when the judgment debt came into being".[note: 2] The AR held that Singapore law, as the *lex fori*, was applicable to determine the nature of the Respondent's claim and when the Respondent's cause of action accrued for the purposes of the LA. Proceeding on that basis, he concluded:[note: 3]

> In my view, Order (iii) [*ie*, the order in the 2001 California Judgment stating that the Appellant was to remain liable for any shortfall between the sale proceeds of the Appellant's interest in the Property and the sum due to (*inter alia*) the Respondent under the 1999 California Judgment (see [5] above)] clearly seeks to enforce the judgment debt created by the first judgment [*ie*, the 1999 California Judgment] (or in fact the [1999] Nevada [J]udgment before that). And that judgment debt accrued way back in 1999. Notwithstanding [the fact] that the [Respondent's] claim is clothed in terms of the second judgment [*ie*, the 2001 California Judgment], in substance it is the judgment debt of 1999 that is sought to be enforced. Therefore, in my view, the action to enforce that judgment debt by way of an implied contract is time-barred under [s]ection 6(1)(a) of the [LA].

9 In view of his decision on limitation, the AR declined to decide the other two questions that had been raised by the Appellant in SUM 189/2008, *viz*, whether the Singapore Action was based on an agreement by way of gaming or wagering, which agreement was null and void under s 5(1) of the CLA, and whether the Singapore Action was an action to recover a gambling debt, which action could not be brought because of s 5(2) of the CLA (see [7] above).

The decision of the Judge

10 The Respondent appealed via Registrar's Appeal No 77 of 2008 and Registrar's Appeal No 78 of 2008 against the AR's decision in, respectively, SUM 189/2008 and SUM 72/2008. The Judge allowed both appeals and set aside the AR's decision. He granted summary judgment to the Respondent on the ground that the 2001 California Judgment was "a fresh judgment which imposed an obligation on the [Appellant] to pay the sums specified in that … judgment" (see the GD at [104]). The 2001 California Judgment was, the Judge stated, given by a competent court; the judgment was final and conclusive against the Appellant, and the latter had no defence to the Singapore Action. The Judge also held that an action to enforce a foreign judgment was subject to a limitation period of six years under s 6(1)(*a*) of the LA (*id* at [84]), although, in his view, the applicable limitation period should be 12 years under s 6(3) of the LA (*id* at [82]). Finally, he held that s 5(2) of the CLA did not apply to any action in Singapore on the 2001 California Judgment since this court had decided in *Liao Eng Kiat*

v Burswood Nominees Ltd [2004] 4 SLR 690 ("*Burswood Nominees*") that a Commonwealth judgment which was "[i]n substance … [a judgment for] a gambling debt owed to [a] casino" (see the GD at [43]) could be registered under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) ("the RECJA") notwithstanding s 5(2) of the CLA (see further [116]–[117] below).

The issues on appeal

11 The Appellant has appealed against the Judge's decision to grant the Respondent summary judgment in the Singapore Action. In his written submissions to this court, the Appellant's counsel invited this court to make the following findings:

(a) the limitation period applicable to the Singapore Action was six years under s 6(1)(*a*) of the LA and not 12 years under s 6(3) thereof;

(b) the Singapore Action was, effectively, an action to enforce either the 1999 California Judgment or the 1999 Nevada Judgment (both of which were given more than six years ago), and was therefore time-barred;

(c) the 2001 California Judgment was not a foreign judgment for a fixed sum of money which could be sued upon in a common law action, but a judgment to set aside the fraudulent transfer by the Appellant of his interest in the Property; and

(d) the Respondent's claim was in reality for a gambling debt, which claim was prohibited under s 5(2) of the CLA.

12 For completeness, we should mention that, prior to the hearing of the appeal proper, three applications were made to this court, namely:

(a) Summons No 5512 of 2008 ("SUM 5512/2008"), which was the Respondent's application for certain paragraphs of the Appellant's written case for this appeal to be struck out;

(b) Summons No 1309 of 2009 ("SUM 1309/2009"), which was the Appellant's application for leave to adduce additional evidence at the hearing of the appeal; and

(c) Summons No 1312 of 2009 ("SUM 1312/2009"), which was an application by (likewise) the Appellant for leave to amend his defence.

We heard SUM 5512/2008 on 4 February 2009. At that hearing, the Respondent withdrew this summons. As for SUM 1309/2009 and SUM 1312/2009, they were heard on 28 April 2009 together with the appeal proper. We treated both applications as withdrawn for reasons which we shall elaborate on below (at [15] and [21] *vis-à-vis*, respectively, SUM 1312/2009 and SUM 1309/2009).

Whether the 2001 California Judgment was a foreign judgment which could be sued upon in Singapore

The law on the enforceability of foreign judgments in Singapore

13 We propose to consider, first, the third finding which the Appellant's counsel invited this court to make (see sub-para (c) of [11] above). This centres on the question of whether the 2001 California Judgment was a foreign judgment that could be sued upon under Singapore law. The law on the enforceability of foreign judgments in Singapore is not in doubt, and is summarised in, *inter alia*,

Dicey, Morris and Collins on The Conflict of Laws (Sir Lawrence Collins gen ed) (Sweet & Maxwell, 14th Ed, 2006) ("*Dicey, Morris and Collins*") at vol 1, para 14-020 as follows:

> For a claim to be brought to enforce a foreign judgment, the judgment must be for a definite sum of money, which expression includes a final order for costs, e.g. in a divorce suit. It must order X, the defendant in the [enforcement] action, to pay to A, the claimant, a definite and actually ascertained sum of money; but if a mere arithmetical calculation is required for the ascertainment of the sum it will be treated as being ascertained; if, however, the judgment orders him to do anything else, e.g. specifically perform a contract, it will not support an action, though it may be *res judicata*. The judgment must further be for a sum other than a sum payable in respect of taxes or the like, or in respect of a fine or other penalty.

14 An *in personam* final and conclusive foreign judgment rendered by a court of competent jurisdiction, which is also a judgment for a definite sum of money (hereafter called a "foreign money judgment"), is enforceable in Singapore unless:

(a) it was procured by fraud; or

(b) its enforcement would be contrary to public policy; or

(c) the proceedings in which it was obtained were contrary to natural justice.

Thus, in *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2002] 2 SLR 81, this court stated (at [12]):

> Quite apart from the arrangements under the RECJA or the [Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed)], it is settled law that a foreign judgment in personam given by a foreign court of competent jurisdiction may be enforced by an action for the amount due under it so long as the foreign judgment is final and conclusive as between the same parties. The foreign judgment is conclusive as to any matter thereby adjudicated upon and cannot be impeached for any error, whether of fact or of law: *Godard v Gray* (1870) LR 6 QB 139. In respect of such an action, an application for summary judgment may be made on the ground that the defendant has no defence to the claim: *Grant v Easton* (1883) 13 QBD 302. The local court will only refrain from enforcing a foreign judgment if it is shown that the plaintiff procured it by fraud, or if its enforcement would be contrary to public policy or if the proceedings in which the judgment was obtained were opposed to natural justice: see 8(1) *Halsbury's Laws of England* (4th Ed) (1996 Reissue) paras 1008–1010.

15 In this connection, the Appellant applied to this court via SUM 1312/2009 for leave to amend his defence to plead that the 2001 California Judgment was not a foreign money judgment (see [12] above). We declined to hear this application and treated it as withdrawn. In our view, it was an unnecessary application as, in summary judgment proceedings, "[a] defendant may raise defences in his affidavit even if they are not referred to in the pleaded defence" (see *Singapore Civil Procedure 2007* (G P Selvam chief ed) (Sweet & Maxwell Asia, 2007) at para 14/2/12) and is "bound by the four corners of his pleadings [only] at the trial of the action but … not … [in] the O. 14 [*ie*, summary judgment] proceedings" (*ibid*).

The Judge's ruling

16 The Judge held that the 2001 California Judgment was a fresh foreign money judgment and could therefore be sued upon for the amount specified therein. In this regard, he accepted the

unchallenged expert evidence of the Respondent's witness, James Arlen Stearman ("Stearman"), a California attorney and former judge *pro tempore* for the Orange County Superior Court, California. At [104] of the GD, the Judge said:

> As a matter of Californian law …, I decided as a question of fact on the basis of the expert evidence available before me [*ie*, Stearman's evidence] that the [2001 California Judgment] … was a fresh judgment which imposed an obligation on the [Appellant] to pay the sums specified in that … [j]udgment independent and irrespective of any previous proceedings in the State of Nevada and independent of any judgments obtained previous thereto. Separately, and as a matter of the substantive law of limitation in accordance with the law of Singapore under the LA, that independent and "fresh" [2001 California Judgment] was enforceable in Singapore by way of a fresh action upon that … [j]udgment by the [Respondent], which action was brought well within the limitation period of six years from the date of the [2001 California Judgment] and hence the action upon the [2001 California Judgment] was not time-barred in Singapore under s 6(1)[(*a*)] of the LA.

The submissions of the parties on appeal

17 The Appellant submitted that the *lex fori*, *ie*, Singapore law, should be applied to determine the real substance of the 2001 California Judgment, having regard to, *inter alia*, *Star City Pty Ltd v Tan Hong Woon* [2002] 2 SLR 22 ("*Star City (CA)*"), *Burswood Nominees* ([10] *supra*) and *Murakami Takako v Wiryadi Louise Maria* [2007] 4 SLR 565 ("*Murakami Takako*"). Based on such an approach, the Respondent would be seeking to enforce a debt created by either the 1999 California Judgment or the 1999 Nevada Judgment (in respect of which a claim would be barred by limitation regardless of which of the two judgments was relied on), and not the 2001 California Judgment. The Appellant further argued that, even if Californian law were applicable, the Respondent's expert evidence (*ie*, Stearman's evidence) would not assist the court, and that an examination of the 2001 California Judgment would show that it was a judgment to set aside the sale of the Appellant's interest in the Property and not a fresh foreign money judgment based on either the 1999 California Judgment or the 1999 Nevada Judgment.

18 The Respondent's case was basically a reiteration of what was found by the Judge, with the additional argument that the 2001 California Judgment was a foreign money judgment as the Santa Clara Superior Court had ordered the payment of a definite sum of money which could be ascertained by a simple arithmetical calculation (citing *Dicey, Morris and Collins* ([13] *supra*) at vol 1, para 14-020 and *Beatty v Beatty* [1924] 1 KB 807).

The Respondent's expert evidence

19 In our view, the issue of whether the 2001 California Judgment was a fresh foreign money judgment should be determined according to Californian law (see *Carl Zeiss Stiftung v Rayner & Keeler Ltd* [1967] 1 AC 853 at 927, *Colt Industries Inc v Sarlie (No 2)* [1966] 1 WLR 1287 at 1293 and *Beatty v Beatty* at 816). Accordingly, we now examine the expert evidence on Californian law.

20 In his affidavit filed on 20 May 2008, Stearman stated (at paras 13–22):

> (a) Under Californian law, the 2001 California Judgment had the effect of creating "a fresh judgment which impose[d] an obligation on the [Appellant] … to pay the sums specified in that [j]udgment"[note: 4] [emphasis in original omitted] – this obligation being "independent and irrespective of any proceedings in the State of Nevada and independent of any judgments obtained [previously]"[note: 5] [emphasis in original omitted].

(b) The right to maintain a separate action on a Californian judgment had long been recognised in California according to *Suzette Thomas v Clyde Thomas* 14 Cal 2d 355 (1939) at 358, a decision of the Supreme Court of California. With regard to the 2001 California Judgment, which, in Stearman's view, was "a judgment … rendered in an action on a prior judgment"[note: 6] (the prior judgment being the 1999 California Judgment), according to *Arnold J Provisor v Levada Nelson* 234 Cal App 2d Supp 876 (1965) at 880, the Californian courts would regard the 2001 California Judgment as, in effect, an extension of the 1999 California Judgment.

(c) The fact that the 1999 Nevada Judgment had "expired"[note: 7] would not affect the enforceability of the 2001 California Judgment. The case of *W L Weir v Bill Corbett* 229 Cal App 2d 290 (1964) indicated that "a California judgment based on a sister-state judgment ha[d] a continued and separate life of its own that [could] still be enforced even if the sister-state judgment ha[d] expired"[note: 8] [emphasis in original omitted].

(d) For enforcement purposes, the 2001 California Judgment was valid for ten years pursuant to California's limitation legislation, and an action to enforce that judgment could be commenced in California at any time within ten years of the entry of the judgment. The case of *United States Capital Corporation v Albert Nickelberry* 120 Cal App 3d 864 (1981) indicated that "a judgment creditor [was] entitled as a matter of right to a judgment on the original judgment provided the second action [was] commenced within the [statutory limitation period] (that is, ten years …)".[note: 9] Furthermore, according to that same case, the effect of bringing an action on an earlier judgment before the limitation period had expired was to extend the earlier judgment and also any lien that might be incidental to it.

(e) The 2001 California Judgment was therefore:[note: 10]

> … a stand alone [*sic*] judgment independent of any proceedings in Nevada, and the award against the [Appellant] of US$2,453,126.33 with post-judgment interest at the statutory rate of ten per cent per annum from 2 June 1999 [in the 1999 California Judgment] … [could] be enforced as part of the [2001] California Judgment. [emphasis in original omitted]

21 The Appellant did not adduce any expert evidence to contradict the evidence of Stearman. But, prior to the hearing of this appeal, the Appellant applied via SUM 1309/2009 to admit the expert evidence of one James H Broderick Jr ("Broderick"), a lawyer from California, on the nature and effect of the 2001 California Judgment under the law of California. Like the earlier-mentioned application for leave to amend the defence (*ie*, SUM 1312/2009), we decided that SUM 1309/2009 was also an unnecessary application and treated it as withdrawn. In our view, it was not apparent from the Appellant's submissions that the evidence of Broderick would add anything to what this court could have ascertained from its own examination of: (a) the court papers filed in the Santa Clara Superior Court for Case No CV 789130 ("the CV 789130 court papers"), which were exhibited in Stearman's affidavit filed on 20 May 2008; and (b) the case law that formed the basis of the propositions made by Stearman (see also s 40 of the Evidence Act (Cap 97, 1997 Rev Ed) and the decision of this court in *Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR 491). In this connection, we should restate the rule of prudence which the court should apply in deciding whether or not to accept expert evidence on any matter before it, including matters of foreign law. To this, we now turn our attention.

The rule of prudence with regard to expert evidence

22 In *Saeng-Un Udom v PP* [2001] 3 SLR 1, this court observed that a judge must not blindly accept expert evidence on any matter merely because that evidence was not contradicted (at [26]–[27]). In *Sakthivel Punithavathi v PP* [2007] 2 SLR 983 ("*Sakthivel Punithavathi*"), V K Rajah JA reiterated this rule (at [76]) as follows:

> What is axiomatic is that a judge is not entitled to substitute his own views for those of an uncontradicted expert's: *Saeng-Un Udom v PP* [2001] 3 SLR 1. Be that as it may, a court must not on the other hand unquestioningly accept unchallenged evidence. Evidence must invariably be sifted, weighed and evaluated in the context of the factual matrix and in particular, the objective facts. An expert's opinion "should not fly in the face of proven extrinsic facts relevant to the matter" per Yong Pung How CJ in *Dr Khoo James v Gunapathy d/o Muniandy* [2002] 2 SLR 414 at [65]. In reality, substantially the same rules apply to the evaluation of expert testimony as they would to other categories of witness testimony. Content credibility, evidence of partiality, coherence and a need to analyse the evidence in the context of established facts remain vital considerations; [the expert witness's] demeanour, however, more often than not recedes into the background as a yardstick.

23 This rule of prudence is especially relevant where the expert is appointed by the party seeking to rely on his evidence and not by the court, as it is merely common sense that no party would call an expert to testify against its own case. As regards the particular substance of the expert evidence in question (such as evidence on foreign law), the court should carefully consider the factual or other premises on which the expert based his opinion. The court should examine the correctness of the expert's premises and reasoning process, as well as whether the expert is really purporting to address the issue or point on which his opinion has been sought. As said in *The H156* [1999] 3 SLR 756 by G P Selvam J (at [27]):

> The function of an expert on foreign law is to submit the propositions of foreign law as fact[s] for the consideration of the court. [T]he court will then make its own findings of what the foreign law is. Even though the expert may submit his conclusions, he must present the materials and the grounds [which] he uses to make his conclusions. The expert may not usurp the function of the court and present his finding. Further he cannot decide the issue by applying the law to the facts without setting out the law and the reasoning process.

24 In the present case, the Judge accepted Stearman's opinion without any reservation because, in his view, it was "not … 'obviously lacking in defensibility'" (see the GD at [110]). Stearman's opinion (as the Judge saw it) was that the 2001 California Judgment was "a fresh judgment which imposed an obligation on the [Appellant] to pay the sums specified in that … [j]udgment independent and irrespective of … any judgments obtained [previously]" (*id* at [104]), and that the judgment "was enforceable in Singapore by way of a fresh action upon that … [j]udgment by the [Respondent]" (*ibid*). It is trite law that an appellate court will ordinarily respect a trial judge's findings on expert evidence, especially where these findings are based on an assessment of oral testimony. However, where the trial judge's findings are based on *inferences* drawn from expert evidence, the appellate court is in as good a position as the trial judge to make a determination itself. In such circumstances, the appellate court is entitled to undertake its own evaluation to determine whether the trial judge's inferential findings are justified by the facts. In an appropriate case, the appellate court is also entitled to examine the underlying facts to see whether there is any evidence to support the expert testimony in question. As Rajah JA stated in *Sakthivel Punithavathi* (at [74]):

> An appellate court will be slow to criticise without good reason a trial court's findings on expert evidence; see the Privy Council case of *Antonio Caldeira Dias v Frederick Augustus Gray* AIR 1936 Journal 154 at 155, 157 and 158, applied by the Court of Appeal in *Muhammad Jefrry v PP*

[1997] 1 SLR 197. However, if the appellate court entertains doubts as to whether the evidence has been satisfactorily sifted or assessed by the trial court it may embark on its own critical evaluation of the evidence focussing on obvious errors of fact and/or deficiencies in the reasoning process.

Our decision on the nature of the 2001 California Judgment

25 At the outset, we should observe that the Judge appeared to have let his guard down in accepting Stearman's evidence merely because he did not find it lacking in defensibility (see the GD at [110]). With respect, an examination of the CV 789130 court papers and the orders made by the Santa Clara Superior Court shows that Stearman's opinion *was* wholly lacking in defensibility. It could be that the Judge was suitably impressed by the candour displayed by Stearman in disclosing in his affidavit filed on 20 May 2008 his close professional relationship with the Respondent. At paras 11–12 of that affidavit, Stearman admitted that he had acted as the attorney of the Respondent in obtaining the 1999 California Judgment and the 2001 California Judgment, and had also acted for the Respondent in 280 other unrelated legal actions but had never acted against it. In this connection, we should draw attention to the statement of Selvam J in *Gunapathy Muniandy v Khoo James* [2001] SGHC 165 that, unless unavoidable, "[an] expert should avoid being the witness of a party with whom he has a special relationship" (at [12.16]). It could be that the candour displayed by Stearman in disclosing in the above-mentioned affidavit his close professional ties with the Respondent led the Judge to believe that his (Stearman's) carefully crafted opinion in that affidavit was equally objective in its analysis of the nature of the 2001 California Judgment.

26 There is no reason for any court to doubt Stearman's opinion that the 2001 California Judgment was an independent judgment in itself (see sub-para (a) of [20] above). All judgments which are final and conclusive, as the 2001 California Judgment obviously was, are independent in themselves. But, was the 2001 California Judgment a foreign money judgment as defined at [14] above? In this regard, if the Judge had perused the CV 789130 court papers and the orders made by the Santa Clara Superior Court in the 2001 California Judgment (all of which documents were exhibited by Stearman in his affidavit filed on 20 May 2008), he would have seen that those documents did not actually support Stearman's opinion.

27 In our view, the 2001 California Judgment was *not* a foreign money judgment. It was, instead, clearly a judgment setting aside the fraudulent transfer by the Appellant of his interest in the Property (with certain consequential orders made as well). This is apparent from the affidavit filed by Stearman on 25 January 2008, in which he described the action that led to the 2001 California Judgment (*ie*, Case No CV 789130) as a "fraudulent conveyance lawsuit" (at para 7.3). Similarly, in an affidavit filed on 8 January 2008 in support of the Respondent's summary judgment application (*ie*, SUM 72/2008), Vernon Albert Nelson Jr, the associate general counsel of the Respondent's parent company, stated (at para 9):[note: 11]

> As a result of such fraudulent transfer [of the Appellant's interest in the Property to Surepath], the [Respondent and Sheraton] filed the further California proceedings on 14 April 2000 [*ie*, Case No CV 789130], *seeking to set aside the fraudulent conveyance and to impose a constructive trust on Surepath for the benefit of the [Respondent] and [Sheraton]* … [emphasis in original omitted; emphasis added]

28 That the 2001 California Judgment was not a foreign money judgment is also confirmed by the complaint which Stearman signed and filed in the Santa Clara Superior Court for Case No CV 789130 ("the Complaint"), which was exhibited in his affidavit filed on 20 May 2008. The Complaint was as follows:[note: 12]

…

WHEREFORE, [the] Plaintiffs [*ie*, the Respondent and Sheraton] pray [for] judgment against [the] Defendants [*ie*, the Appellant and Surepath, in the context of this quote] and each of them as follows:

…

30. For an order and declaration: that the Defendants and each of them are constructive trustees of an undivided one-third fee interest ("the Interest") in the Property transferred from [the Appellant to Surepath]; that the Transfer be set aside and avoided; that the Interest be held in a constructive trust for the benefit of [the] Plaintiffs until the Judgments of [the] Plaintiffs [*ie*, the 1999 California Judgment and the Sheraton Judgment] have been satisfied, in part or in full, to the extent of the equity of [the Appellant] in the Property, free and clear of the claims and interests of the Grantee Defendants, if any; that the interests of [the] Plaintiffs in the Property are superior to any interests in the Property claimed by the Defendants and each of them; and that the Interest be … sold in order to partially satisfy the Judgments.

31. For costs of [the] suit incurred herein; and

32. For such other and further relief as the Court may deem just and proper.

…

29 As would be expected from the specific reliefs sought in the Complaint, the orders granted by the Santa Clara Superior Court were framed in terms of those reliefs. The orders read as follows:[note: 13]

…

IT IS HEREBY FURTHER ORDERED AND ADJUDGED that the transfer of [the Appellant's] one-third interest in the Property to SUREPATH be and hereby is set aside, that [the] said interest in the Property be and hereby is held in a constructive trust for the benefit of [the] Plaintiffs [*ie*, the Respondent and Sheraton], and that [the] said one-third interest in the Property … is hereby ordered to be levied upon and sold by the Santa Clara County Sheriff, or any other duly authorized levying officer, under a Writ of Sale without right of redemption in order to satisfy, in part or in full (as the case may be), those certain judgments ("the Judgments") held by [the] Plaintiffs against [the Appellant] as follows:

1. The judgment recovered by [Sheraton] … on June 2, 1999, [in] Case Number CV782288, in the total sum of $2,006,333.88 with post-judgment interest on the balance thereof at the statutory rate of ten percent per annum from June 2, 1999 ($557.31 per day) until [the balance is] paid in full …; and

2. The [j]udgment recovered by [the Respondent] … on June 2, 1999, [in] Case Number CV782287, in the total sum of $2,453,126.33 with post-judgment interest on the balance thereof at the statutory rate of ten percent per annum from June 2, 1999 ($681.42 per day) until [the balance is] paid in full …

IT IS HEREBY FURTHER ORDERED that the Property be levied upon and sold in the manner prescribed by [the] Code of Civil Procedure [of California] Section 716.020. The proceeds of sale shall be applied pro-rata toward the Judgments referenced in the previous paragraph [*ie*, the Sheraton Judgment and the 1999 California Judgment] and if there are not sufficient proceeds from the sale to satisfy the Judgments in full, then [the Appellant] shall remain liable for any such deficiency on the Judgments.

IT IS HEREBY FURTHER ORDERED that a Writ of Sale/Execution be issued by the Clerk of this Court in accordance with the terms of this Judgment.

…

[underlining in original omitted]

30 It can be seen from the terms of the Santa Clara Superior Court's orders that the Appellant was not ordered to pay a definite sum of money to the Respondent and Sheraton. There was no need for the court to make such an order as both the Respondent and Sheraton already had valid and enforceable judgments against the Appellant.

31 The only basis on which the Respondent could have argued that the Santa Clara Superior Court had ordered the Appellant to pay the balance of the judgment debt due under the 1999 California Judgment would be the following phrase in the 2001 California Judgment, *viz*:[note: 14]

[I]f there are not sufficient proceeds from the sale [of the Appellant's interest in the Property] to satisfy the Judgments [*ie*, the 1999 California Judgment and the Sheraton Judgment] in full, then *[the Appellant] shall remain liable for any such deficiency on the Judgments*. [emphasis added]

The Respondent submitted that the italicised words meant that the Appellant was ordered to pay the balance owed to it under the 1999 California Judgment, which amount could be easily calculated; therefore, the 2001 California Judgment was a foreign money judgment.

32 In our view, this argument puts the cart before the horse as it assumes that the italicised words in the quotation at [31] above created, or were intended to create, a fresh obligation on the Appellant to pay the balance of the judgment debt due under the 1999 California Judgment. In our view, there is nothing in the language of the 2001 California Judgment to support such a strained interpretation. In the context of Case No CV 789130, which was an action to set aside the fraudulent transfer by the Appellant of his interest in the Property, this would be an inappropriate interpretation. Indeed, the words "shall remain liable"[note: 15] are clearly mere surplusage as, even without these words, the Appellant would have remained liable to pay any outstanding sum due under (*inter alia*) the 1999 California Judgment if the proceeds from the sale of his interest in the Property were insufficient to discharge the entire judgment debt (which turned out to be the case). In short, there was no conceivable reason for the Santa Clara Superior Court to grant a relief which the Respondent had not sought and which was, in any event, not necessary.

33 For the above reasons, we are of the view that the Judge was wrong in holding that the 2001 California Judgment was a foreign money judgment enforceable by a common law action. The Judge merely accepted Stearman's evidence without examining the underlying facts. We might also add that, given the nature of the 2001 California Judgment, once it was fully executed, it would have exhausted itself and there would be nothing left to execute or enforce in respect of that judgment.

34 For these reasons, this appeal must succeed. The Singapore Action should have been struck

out or dismissed on the ground that the 2001 California Judgment was not a foreign money judgment and was therefore not enforceable under Singapore law.

Other issues raised in this appeal

35 In view of our decision at [34] above, it is not strictly necessary for us to address the other issues canvassed in this appeal (as outlined at [11] above), *viz*:

(a) the limitation period applicable to a common law action on a foreign judgment ("the Limitation Issue") and, specifically, whether (applying the relevant limitation period) the Singapore Action was time-barred; and

(b) the applicability of s 5(2) of the CLA to a common law action on a foreign judgment whose underlying cause of action is a gambling debt ("the Section 5(2) CLA Issue").

However, having regard to the invitation by the Judge to this court to revisit the Limitation Issue and (apropos the Section 5(2) CLA Issue) his decision that s 5(2) of the CLA was not applicable to a common law action on a foreign judgment which was founded on a gambling debt, we shall examine these two issues in order to clarify what we consider to be the applicable law. We should also point out that our analysis will be confined to foreign money judgments as defined at [14] above since a foreign judgment must be in the form of a foreign money judgment before it can be sued on in Singapore (see [13]–[14] above). The expression "foreign judgment" (or "foreign judgments") in the rest of this judgment should therefore be taken to mean, specifically, a foreign money judgment (or foreign money judgments, as the case may be).

The Limitation Issue

Sections 6(1)(a) and 6(3) of the LA

36 Turning, first, to the Limitation Issue (*ie*, the limitation period applicable to a common law action on a foreign judgment), as mentioned earlier (see [10] above as well as the GD at [82]), the Judge was of the view that the limitation period for such an action should be 12 years under s 6(3) of the LA rather than (as decided by this court in *Murakami Takako* ([17] *supra*)) six years under s 6(1)(*a*) of the LA. These two provisions state as follows:

> **Limitation of actions of contract and tort and certain other actions**.
>
> **6.—(1)** Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:
>
> (*a*) actions founded on a contract or on tort;
>
> (*b*) actions to enforce a recognizance;
>
> (*c*) actions to enforce an award;
>
> (*d*) actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or sum by way of penalty or forfeiture.
>
> …
>
> (3) An action upon any judgment shall not be brought after the expiration of 12 years from the

date on which the judgment became enforceable and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of 6 years from the date on which the interest became due.

The reasoning of the Judge

37 The Judge gave the following reasons for his view that an action on a foreign judgment should fall within the purview of s 6(3) of the LA and not s 6(1)(*a*) thereof:

(a) Paragraph 184 of the Law Reform Committee, Singapore Academy of Law, *Report of the Law Reform Committee on the Review of the Limitation Act (Cap 163)* (February 2007) (Chairman: Charles Lim Aeng Cheng) ("the Report") appeared to indicate that (see the GD at [70]):

> … [S]uing on a foreign judgment came within the ambit of s 6(3) of the LA. Although the [R]eport did not explicitly say so, it nevertheless discussed the enforcement of … foreign judgments in the context of s 6(3) and not s 6(1)(*a*) of the LA.

(b) As the word "judgment" in the LA was "not defined … to be restricted only to domestic judgments" (*id* at [71]), it was possible to interpret that word as a reference to any judgment, whether foreign or domestic. According to the Judge (*ibid*):

> There is no good reason to read "any judgment" [in s 6(3) of the LA] restrictively to exclude foreign judgments … A judgment is a judgment of a court, whether foreign or domestic. For comity reasons, it [*ie*, a foreign judgment] should be regarded as such [*ie*, as a domestic judgment] and not as an "implied contract" so as to contort it [into] an "action founded on a contract" to fit within s 6(1)(*a*) of the LA.

(c) An examination of s 6 of the LA would show that (see the GD at [72]):

> (a) [N]o distinction is made between an action founded on a domestic or foreign contract or tort;
>
> (b) no distinction is made between an action to enforce a domestic or foreign award;
>
> (c) no distinction is made between an action for an account brought in respect of any domestic or foreign matter.

Also, the structure of the LA "appear[ed] not to make any distinction or division between foreign causes of action (… which the Singapore court [had] jurisdiction to try) and domestic causes of action" (*id* at [73]). These considerations would indicate that "there [was] … no good reason to construe the word 'judgment' in s 6(3) restrictively and limit it only to domestic judgments" (*ibid*). Such an approach would be "inconsistent when seen from the perspective of the overall structure of the LA" (*ibid*).

(d) A domestic judgment could give rise to an independent cause of action "in the nature of an implied contract" (see the GD at [74]), but such an action would be governed by the limitation period set out in s 6(3) of the LA and not the limitation period set out in s 6(1)(*a*) (*ibid*). Similarly, an action upon a foreign judgment would give rise to "an ***independent cause of action***, in the 'nature of a claim for a debt', which arises at the time the original judgment is made" [emphasis in bold italics in original] (*ibid*). Accordingly, it would be (*ibid*):

> … quite extraordinary that the limitation [period] for an action upon a ***foreign*** judgment should be shunted to s 6(1)(*a*) whereas the limitation [period] for an action upon a ***domestic*** judgment stays with s 6(3) of the LA, when the juridical basis for a fresh action upon the judgment is the same in both cases. [emphasis in bold italics in original]

(e) In the Judge's view (*ibid*):

> The concept of an "implied contract" [was] created to enable [an] action upon [a] foreign judgment to be proceeded with and to provide a philosophical or jurisprudential basis to support the cause of action …, but it should not convert a foreign judgment into a contract (or a foreign judgment debt into a contractual debt), when it is not so in substance and in reality. A binding judgment is not quite the same as a binding contract, irrespective [of] whether it is a domestic or [a] foreign judgment.

In truth, a foreign judgment debt was (*ibid*):

> … an obligation imposed by the foreign court on the judgment debtor to pay [a sum of money] and … [did] not constitute a consensual and voluntary obligation agreed to by one contracting and consenting party to pay the sum stated in the foreign court judgment to the other contracting and consenting party as a matter of contract.

(f) Canadian case law would support the proposition that s 6(3) of the LA should apply to common law actions on foreign judgments. In this regard, the Judge noted that the Supreme Court of Canada had in *Morguard Investments Ltd v De Savoye* (1990) 76 DLR (4th) 256 ("*Morguard Investments*") advocated "international comity whereby decisions of foreign courts [would be] afforded appropriate levels of deference and respect" (see the GD at [77]). The Judge also cited (at [78] of the GD) the Ontario Supreme Court case of *Girsberger v Kresz* (2000) 47 OR (3d) 145 ("*Girsberger*"), where Cumming J argued (at [46]) that, in the light of *Morguard Investments*, there was no reason why foreign judgments should not be recognised for what they truly were, *ie*, as judgments and not simple contractual debts. Cumming J further opined that the characterisation of a foreign judgment as a simple contractual debt was "an outmoded conception which emphasize[d] sovereignty and independence at a substantial cost of unfairness to the party wishing to have its foreign judgment enforced in Canada" (*id* at [47]). He was also of the view that the longer limitation period of 20 years that would apply following his re-characterisation of foreign judgments as judgments (*cf* the limitation period of six years under Ontario law *vis-à-vis* actions based on contracts or debts) was "appropriate and fair" (*id* at [49]) in this era of globalisation.

(g) English case law would also indicate that the limitation period for common law actions on foreign judgments was governed by s 6(3) of the LA. In *Owens Bank Ltd v Bracco* [1992] 2 AC 443 (which was cited at [79] of the GD), Lord Bridge of Harwich stated (at 484):

> A foreign judgment given by a court of competent jurisdiction over the defendant is treated by the common law as imposing a legal obligation on the judgment debtor which will be enforced in an action on the judgment by an English court …

In *Tasarruf Mevduati Sigorta Fonu v Demirel* [2007] 1 WLR 2508 ("*TMSF v Demirel*"), Sir Anthony Clarke MR, who delivered the judgment of the English Court of Appeal, observed (at [41]) that s 24 of the Limitation Act 1980 (c 58) (UK) ("the 1980 UK Limitation Act") – *ie*, the English equivalent of s 6(3) of the LA, although it should be noted that the limitation period in s 24 of the 1980 UK Limitation Act is six years rather than 12 years as per s 6(3) of the LA – was applicable

to an action to enforce a Turkish judgment in England.

38 The Judge concluded (see the GD at [81]–[82]):

> 81 As a matter of principle, the juridical basis for a claim brought upon a foreign judgment should not have a decisive bearing on the interpretation of a statute of limitation, and this [is] borne out by the English Court of Appeal['s] decision in *TMSF* [*v Demirel*]. The plain, ordinary and natural meaning of "any judgment" in [s] 6(3) of the LA should be given effect to and should be interpreted without any qualification to include both a foreign and a domestic judgment.
>
> 82 For the reasons set out above, it would be in my view preferable to follow the approach of the English courts … and to hold that the time bar for commencing a fresh action upon any judgment, be it a foreign or [a] domestic judgment, should be 12 years as set out in s 6(3) of the LA and not six years as set out in s 6(1)(*a*) of the LA.

The submissions of the parties

39 The Appellant submitted that s 6(3) of the LA was never intended to apply to a common law action on a foreign judgment (referring to the historical review of the equivalent English provision, *viz*, s 24 of the 1980 UK Limitation Act, in *Lowsley v Forbes (trading as L E Design Services)* [1999] 1 AC 329). The Appellant also referred to *Westacre Investments* ([8] *supra*) , *Murakami Takako* ([17] *supra*), the English High Court case of *Berliner Industriebank Aktiengesellschaft v Jost* [1971] 1 QB 278 ("*Berliner Industriebank*") and the Nova Scotia Supreme Court case of *Jean Pollier v Peter A Laushway* [2006] NSSC 165 ("*Jean Pollier*") as authorities in support of his contention that s 6(1)(*a*) of the LA, and not s 6(3) thereof, applied to common law actions on foreign judgments.

40 The Respondent's submissions in reply consisted basically of a reiteration of the Judge's reasoning. In addition, the Respondent also contended – in direct opposition to the Appellant's argument – that the genesis of s 6(3) of the LA showed that this provision *was* meant to apply to common law actions on foreign judgments.

Preliminary observations on the Judge's propositions

41 In our view, the Judge, in holding that the limitation period applicable to a common law action on a foreign judgment should be 12 years (pursuant to s 6(3) of the LA) and not six years (pursuant to s 6(1)(*a*) of that Act), relied on a number of propositions that are questionable. The first of these propositions is that there is no difference between the *legal status* of a *foreign* judgment and that of a *domestic* judgment. We beg to differ. A judgment is a formal act of the court in the *exercise of the judicial power of a sovereign State*. A foreign judgment is not any act of a domestic court, and, therefore, for a Singapore court to treat a foreign judgment as being the same as a Singapore judgment would be to allow a foreign State to exercise sovereign power in Singapore. This is contrary to the established legal order. In our view, a foreign judgment has no standing in a domestic court unless it is recognised as having some legal effect at common law or by virtue of express legislation (see, *eg*, the RECJA and the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) ("the REFJA")).

42 At common law, a foreign judgment is treated as an implied obligation to pay a debt (*ie*, the sum awarded by the foreign court) which may be enforced by a common law action (see, *inter alia*, the quotation from *Berliner Industriebank* set out at [51] below). The Judge relied on the words "an action on the judgment" in Lord Bridge's statement in *Owens Bank Ltd v Bracco* ([37] *supra*) at 484 to support his conclusion that a foreign judgment had the same legal effect as a domestic judgment.

With respect, these words were taken out of the context of the entire statement by Lord Bridge, which was that a foreign judgment merely created an implied obligation to pay the sum specified in the judgment (see Lord Bridge's full statement as reproduced at sub-para (g) of [37] above). In *Re Cheah Theam Swee* [1996] 2 SLR 76, Warren L H Khoo J stated the principle clearly as follows (at 82, [14]):

> At English common law, [a judgment] for the payment of money of a foreign court *only creates a debt between the parties*. It cannot be enforced as a judgment; it only provides a cause of action on which the debtor can be sued in England. It is the judgment obtained in the fresh suit in England, not the judgment originally obtained in the foreign court, which is enforceable as a judgment in England. [emphasis added]

43 The Judge was of the view that, because both an action brought in a Singapore court on a domestic judgment and an action brought in a Singapore court on a foreign judgment would produce a fresh judgment that was immediately enforceable, the two judgments – *ie*, the domestic judgment sued upon and the foreign judgment sued upon – should have the same legal status in domestic law for the purposes of enforcement. With respect, this view is based on fallacious reasoning. It relies on the apparent similarity between the legal outcome of an action on a domestic judgment and that of an action on a foreign judgment to imply that these two outcomes have the same cause (*viz*, a court judgment) and, therefore, that cause (*viz*, the court judgment in question) should have the same standing in law regardless of whether it emanates from a domestic or a foreign court. Such reasoning is fallacious because an action on a foreign judgment will produce the same effect or outcome as an action on a domestic judgment only *after* the foreign judgment in question has actually been sued on in a domestic court. Before that, the foreign judgment is still merely a foreign judgment. For a foreign judgment to acquire the status of a domestic judgment with its attendant right of immediate execution, the judgment creditor must first sue on the foreign judgment as an implied debt. The difference between an action on a domestic judgment and an action on a foreign judgment is also apparent from the legal defences available to the defendant in each case. In the case of the former, only the defence of abuse of process applies (as the Judge himself recognised (see the GD at [105])), whereas, in the case of the latter, other defences such as fraud, breach of natural justice and public policy are relevant (see [14] above).

44 Further, when considered in the context of the regime for registering foreign judgments under the RECJA (*vis-à-vis* Commonwealth judgments) and the REFJA (*vis-à-vis* non-Commonwealth foreign judgments), the Judge's opinion that a foreign judgment is or should be the same as a domestic judgment is inconsistent with the underlying legal basis upon which these two statutes were enacted. If a foreign judgment (whether emanating from a Commonwealth court or a non-Commonwealth foreign court) is legally the same as a domestic judgment, no legislative purpose would be advanced by those Acts. Furthermore, in respect of non-Commonwealth foreign judgments, s 4(1)(*a*) of the REFJA provides that such a foreign judgment may be registered "within 6 years after the date of the judgment", and s 7(1) states that no proceedings for the recovery of a sum payable under such a foreign judgment will be entertained by a Singapore court other than "proceedings by way of registration of the judgment". Thus, if, for example, the REFJA were applicable to California, the Respondent would not be able to register the 1999 California Judgment after six years of its issue. On the other hand, if the REFJA were not applicable to California (as is presently the case), the Respondent would, on the Judge's view that s 6(3) of the LA is applicable, have 12 years to commence a common law action on that judgment. In the face of such a result, there would be no reason for any foreign State to enter into an arrangement with Singapore for the reciprocal enforcement of its judgments under the REFJA as to do so would merely be to shorten the period during which its judgments can be enforced in Singapore.

45 Finally, the LA is a *domestic* statute. The established principle of construction of domestic legislation is that it is meant to deal with domestic matters, unless expressly provided otherwise. An example would be s 5(1) of the CLA, which has been construed as being inapplicable to foreign gaming and wagering contracts (see the High Court's decision in *Star City Pty Ltd v Tan Hong Woon* [2001] 3 SLR 206 at [11]; it appears that this particular aspect of the High Court's decision was not challenged in *Star City (CA)* ([17] *supra*)). Accordingly, the word "judgment" in s 6(3) of the LA *prima facie* means a domestic judgment and not a foreign judgment.

Canadian views on the status of foreign judgments

46 Turning to the Canadian cases which the Judge relied on to support his opinion that a foreign judgment should have effect as a domestic judgment on the basis that a judgment is a judgment (and every court should accord due deference to the judgment of another court, even if that court is a foreign court), we do not agree that those cases reflect the established conflict of laws principles. What was stated in *Morguard Investments* ([37] *supra*) should be read and understood in the context of Canada as a federal State.

47 In Canada, each province has its own legal system independent of the legal systems of other provinces, and a judgment given in one province is a foreign judgment in another province. Politically, it would make sense for each province to recognise the judgment of another province as though that judgment were a domestic judgment for the purposes of enforcement, but this was not how the law developed before Canada became a federal State. It is therefore not surprising that some judges in other Canadian provinces have rejected Cumming J's view in *Girsberger* ([37] *supra*) that all provincial court judgments should be treated as domestic judgments. This view was rejected, for example, by the Ontario Court of Appeal in *Lax v Lax* (2004) 70 OR (3d) 520. In that case, Feldman JA, after reviewing the history of the enforcement of domestic judgments and foreign judgments, said:

> [29] In summary, a foreign judgment cannot be enforced in Ontario except by first suing on the judgment to obtain a domestic judgment against the debtor. That action must be brought within six years from when the cause of action arose, which is the date of the foreign judgment. However, if the debtor was not in Ontario on the date of the judgment, then the six years does not commence until the debtor returns to Ontario. Once the domestic judgment is obtained, it can be enforced in the usual way and is subject to the 20-year limitation period.
>
> [30] This analysis demonstrates that as a procedural matter, for the purposes of enforcement, foreign judgments and domestic judgments are not equivalent. Cumming J.'s position in *Girsberger* is that, in order to give foreign judgments the full faith and credit that our new approach of comity among nations requires, we must apply the same limitation period for enforcement of both types of judgments. Therefore, the old *Limitations Act* [*ie*, the Limitations Act, RSO 1990, c L 15 ("Ontario's 1990 Limitations Act")] must be interpreted to reflect that approach and to accomplish that goal.
>
> [31] In my view, although there is merit in the philosophical approach advocated by Cumming J., in order to achieve the type of parity between domestic and foreign judgments that he is advocating, more significant changes must be made to the enforcement scheme than interpreting "judgment" in s. 45(1)(*c*) [of Ontario's 1990 Limitations Act] to include a foreign judgment. This would require legislative action. As long as only domestic judgments can be enforced by execution and the other methods discussed [at [26]–[27]] above, and therefore foreign judgments must be transformed into domestic judgments or registered before they are enforceable as domestic judgments, there is not parity of treatment.

[emphasis in original]

48 Other Canadian decisions that have rejected Cumming J's view in *Girsberger* include *Yugraneft Corp v Rexx Management Corp* [2007] 10 WWR 559, where P Chrumka J of the Alberta High Court said that any change in the law should be effected by legislation. Also, in *Jean Pollier* ([39] *supra*), the Supreme Court of Nova Scotia said:

> [17] Historically, there has been a distinction in Canada between domestic judgments and foreign judgments when it comes to both enforcement and limitation periods. For example, in Nova Scotia, a domestic judgment can be directly enforced by execution. The situation is different with foreign judgments. Unless a foreign judgment is registered in this province pursuant to the *Reciprocal Enforcement of Judgments Act* [RSNS 1989, c 388] (which application for registration must be made within six years from the date of the foreign judgment) a foreign judgment cannot be enforced without first suing on the judgment and obtaining a domestic judgment against the debtor. Once a domestic judgment is obtained, it can be enforced [in] the same way as all domestic judgments and is subject to a twenty[-]year limitation period.
>
> [18] In relation to the applicable limitation period for such actions, it has long been held that an action to enforce a foreign judgment is an action upon a simple contract debt (see for example **Rutledge v. United States Savings and Loan Co**. (1906), 37 S.C.R. 546.) Castel and Walker in *Canadian Conflict of Laws*, 6th ed., (Butterworths, 2005) explain the matter at 14.3 as follows:
>
> > A foreign judgment is regarded as creating a debt between the parties to it, which is said to be based on the judgment debtor's implied promise to pay the amount of the foreign judgment … The debt so created is a simple contract debt and not a specialty debt, and it is subject to the appropriate limitation period …
>
> …
>
> [26] While I agree with the suggestion in [*Lax v Lax*] … that there is merit in the philosophical approach advanced by Cumming J. in [*Girsberger*] …, I conclude that the law remains that an action to enforce a foreign judgment is an action upon a simple contract debt and in Nova Scotia, the applicable limitation period for such an action is six years after the cause of any such action arose.
>
> [emphasis in original]

Our view on the applicable limitation period

49 In our view, the law in Singapore is the same as that stated in the above passage from *Jean Pollier*. The law may also be said to be generally the same in all Commonwealth jurisdictions. Since a common law action on a foreign judgment is an action on an implied debt, it is subject to the limitation period in s 6(1)(*a*) of the LA. Support for this proposition can be found in *Berliner Industriebank* ([39] *supra*). Before turning to that case, the background to the LA should be explained in brief.

50 The earliest version of the LA – namely, the Limitation Ordinance 1959 (Ord No 57 of 1959) ("the 1959 Limitation Ordinance") – was enacted to repeal the then existing legislation relating to limitation of actions and to adopt the English regime set out in the Limitation Act 1939 (c 21) (UK) ("the 1939 UK Limitation Act") (see the Explanatory Statement to the Limitation Bill 1959 (Bill 18 of 1959)). As the then Minister for Labour and Law, Mr K M Byrne, said in his speech at the second

reading of this Bill (see Colony State of Singapore, *Legislative Assembly Debates, Official Report* (2 September 1959) vol 11 at col 587):

> … [I]n the Federation [of Malaya], a committee was set up in 1950 to consider the law relating to limitations. This committee recommended the adoption of the English law of limitations as contained in the Limitation Act of 1939 [*ie*, the 1939 UK Limitation Act]. As a result, the Federation [of Malaya], in 1953, enacted the Limitation Ordinance [1953 (Ord No 4 of 1953)]. The Singapore Bar Committee has also considered the matter and has recommended that legislation on the lines of the English Limitation Act, 1939, [*ie*, the 1939 UK Limitation Act] and the Federation Limitation Ordinance, 1953, [*ie*, the Limitation Ordinance 1953 (Ord No 4 of 1953) (M'sia)] be enacted in Singapore.

51 The equivalent of ss 6(1)(*a*) and 6(3) of the 1959 Limitation Ordinance (which correspond to, respectively, ss 6(1)(*a*) and 6(3) of the LA) in the 1939 UK Limitation Act would be ss 2(1)(*a*) and 2(4) respectively. In *Berliner Industriebank*, Brandon J held (at 285–286) with regard to the ambit of ss 2(1)(*a*) and 2(4) of the 1939 UK Limitation Act:

> By English law there is a right of action on a foreign judgment which is, first, for a fixed sum and, second, final and conclusive. This right is subject to a number of conditions as follows. First, that the foreign court concerned had jurisdiction in the particular case. Second, that the judgment was not for payment of a fine, penalty or tax, or anything of that nature. Third, that the judgment was not vitiated by fraud. Fourth, that enforcement of the judgment is not contrary to English public policy. Fifth, that the proceedings in which the judgment was given were not contrary to natural justice. Sixth, that the judgment is not registrable under the Foreign Judgments (Reciprocal Enforcement) Act, 1933 [(c 13) (UK)].
>
> The basis of the right of action appears from the judgment of Parke B. in *Williams* v. *Jones* (1845) 13 M. & W. 628[; 153 ER 262]. Parke B. said, at p. 633:
>
> > "The principle on which this action is founded is that where a court of competent jurisdiction has adjudicated a certain sum to be due from one person to another a legal obligation arises to pay that sum on which an action of debt to enforce the judgment may be sustained. It is in this way that the judgments of foreign and colonial courts are supported and enforced, and the same rule applies to inferior courts in this country, and applies equally whether they be courts of record or not."
>
> The principle there enunciated has been followed in numerous cases since. The action is regarded as being on an implied debt, *Grant* v. *Easton* (1883) 13 Q.B.D. 302. *Because of this, the period of limitation is, as both sides agreed, six years under section 2(1)(a) of the [1939 UK Limitation Act]*. …
>
> [emphasis added]

52 As is apparent from the above quotation, Brandon J accepted that, as far as the 1939 UK Limitation Act was concerned, the correct construction was that s 2(1)(*a*) of that Act, and not s 2(4), applied to common law actions on foreign judgments, and counsel for the parties were *ad idem* on this point. An appeal against Brandon J's decision was dismissed (see the decision of the English Court of Appeal in *Berliner Industriebank Aktiengesellschaft v Jost* [1971] 2 QB 463). A similar statement of the law can be found in David W Oughton, John P Lowry & Robert M Merkin, *Limitation of Actions* (LLP, 1998), where it is stated (at p 138):

> Although *section 24 [of the 1980 UK Limitation Act (*ie*, the equivalent of s 2(4) of the 1939 UK Limitation Act and s 6(3) of the LA)] applies only to a judgment obtained in England and Wales*, *the limitation period in respect of a foreign judgment is also six years on the basis that such an action is a simple contract debt*. This point was settled by Alderson B in *Williams* v. *Jones* [(1845) 13 M & W 628; 153 ER 262] where he said: "The true principle is, that where a Court of competent jurisdiction adjudges a sum of money is to be paid, an obligation to pay it is created thereby, and an action of debt may therefore be brought upon such judgment. This is the principle on which actions on foreign judgments are supported." [emphasis added]

53 In our view, since the LA can be traced back to the 1939 UK Limitation Act, Brandon J's decision in *Berliner Industriebank* is authoritative on the ambit of ss 6(1)(*a*) and 6(3) of the LA. As regards the opinion of Sir Clarke MR in *TMSF v Demirel* ([37] *supra*) (see sub-para (g) of [37] above), the issue of limitation did not arise in that case, and the Master of the Rolls appeared to have assumed that s 24 of the 1980 UK Limitation Act (*ie*, the equivalent of s 2(4) of the 1939 UK Limitation Act and, in our local context, s 6(3) of the LA) was the applicable provision.

54 For the above reasons, our view apropos the Limitation Issue is that the limitation period applicable to a common law action on a foreign judgment is six years pursuant to s 6(1)(*a*) of the LA.

The Section 5(2) CLA Issue

55 Turning now to the Section 5(2) CLA Issue, the question in this regard is whether the Judge was correct in deciding that a common law action on a foreign judgment based on a gambling debt could be brought in Singapore in spite of s 5(2) of the CLA. In analysing this issue, it is necessary that we examine what this court decided in *Burswood Nominees* ([10] *supra*) and whether that decision can support the Judge's decision on the Section 5(2) CLA Issue. The reason is that the Judge relied on, *inter alia*, this court's decision in *Burswood Nominees* as being supportive of his decision that "s 5(2) of the CLA did not bar a common law action in Singapore upon a foreign judgment based on a foreign gambling debt" (see the GD at [42]). Indeed, *Burswood Nominees* appears to have been the linchpin of the Judge's ruling on the Section 5(2) CLA Issue as the Judge expressly acknowledged that that case was "instrumental in guiding [him] to the determination of this question in favour of the [Respondent]" (*ibid*).

Methods of enforcing foreign judgments in Singapore

56 Before we proceed with our analysis of *Burswood Nominees*, it is helpful for us to first set out the two existing regimes for enforcing foreign judgments in Singapore as the Judge's reasoning straddles both regimes. Under the first regime, the judgment creditor sues on the foreign judgment by way of a common law action in Singapore. This is what the Respondent has done in the present case in relation to the 2001 California Judgment. We have at [13]–[14] above set out the legal conditions that have to be satisfied before such a common law action can be brought.

57 Under the second regime, the judgment creditor registers the foreign judgment in the High Court. Here, there are two systems of registration, one for Commonwealth judgments (*ie*, the RECJA) and one for non-Commonwealth foreign judgments (*ie*, the REFJA). Once the foreign judgment in question is registered, it has the same force and effect, and may be enforced in the same way as a Singapore judgment (see s 3(3)(*a*) of the RECJA *vis-à-vis* Commonwealth judgments and s 4(4) of the REFJA *vis-à-vis* non-Commonwealth foreign judgments).

58 Under the RECJA, a Commonwealth judgment may be registered (provided none of the restrictions on registration in s 3 of the Act apply) for the purposes of enforcement in Singapore if it

falls within the statutory definition of "judgment", *ie*, if it is (*per* s 2(1) of the RECJA):

> … [a] judgment or order given or made by a court in any civil proceedings, whether before or after the passing of this Act, whereby any sum of money is made payable, … [or] an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place …

59 Under the REFJA, a non-Commonwealth foreign judgment may be registered (provided none of the restrictions on registration in s 4 of the Act apply) for the purposes of enforcement in Singapore if it is (*per* s 2(1) of the REFJA):

> … a judgment or order given or made by a court in any civil proceedings, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party …

It should be noted that the restrictions on registration under the RECJA are different from the restrictions under the REFJA. In particular, there is no equivalent of s 3(2)(*f*) of the RECJA (a provision which we shall discuss in greater detail below) in the REFJA. However, the REFJA is not relevant in the present case as it has not been extended to either Nevada or California and, therefore, none of the foreign judgments obtained in the US by the Respondent against the Appellant (*ie*, the 1999 Nevada Judgment, the 1999 California Judgment and the 2001 California Judgment) can be registered under the REFJA. It should also be noted that, in any event, the 2001 California Judgment, upon which the Singapore Action is based, is not a registrable foreign judgment since it is not a judgment for the payment of a sum of money (see [27] above; see also the definition of "judgment" in s 2(1) of the REFJA as set out above). The inapplicability of the REFJA to all the judgments obtained by the Respondent against the Appellant could account for the commencement of the present common law action on the 2001 California Judgment (*ie*, the Singapore Action).

The decision in Burswood Nominees

60 In *Burswood Nominees* ([10] *supra*), the plaintiff, Burswood Nominees Ltd ("Burswood"), was the operator of a licensed casino in Western Australia. The defendant, Liao Eng Kiat ("Liao"), issued a personal cheque to Burswood in exchange for a chip purchase voucher, which he then exchanged for A$50,000 worth of gambling chips to gamble at Burswood's casino. Liao lost the whole sum at the gambling tables and failed to honour the cheque. Burswood sued Liao on the dishonoured cheque and obtained default judgment in a Western Australian court ("the WA Judgment"). Burswood then applied (*ex parte*) to the High Court and obtained leave to register the WA Judgment in Singapore pursuant to the RECJA. Liao subsequently applied to set aside the registration of the WA Judgment on the ground that the High Court was precluded from registering it under s 3(2)(*f*) of the RECJA.

61 Section 3(2)(*f*) of the RECJA *expressly* 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 have been entertained by [a Singapore] court". As the cause of action on which the WA Judgment rested was undoubtedly a gambling debt, the question arose as to whether that cause of action was one which, for public policy reasons, could not be entertained in Singapore. The High Court held in *Burswood Nominees Ltd v Liao Eng Kiat* [2004] 2 SLR 436 that Liao's cheque had been given in exchange for a genuine loan and that the sum awarded by the Western Australian court was not a gambling debt; accordingly, s 5(2) of the CLA had no application. The court also held that the doctrine of comity of nations required the Singapore courts to recognise the WA Judgment, which was a foreign money judgment (as defined at [14] above).

62 Liao appealed against the decision of the High Court on, *inter alia*, the ground that Burswood's claim on his dishonoured cheque was a claim based on a gambling debt and *not* a claim based on a genuine loan. This court accepted this particular submission and, applying the re-characterisation process set out in *Star City (CA)* ([17] *supra*), held that Burswood's claim was "for money won upon a wager" (see *Burswood Nominees* at [21]). The court also held that, if Burswood had commenced an action in Singapore on the dishonoured cheque, that action would have been barred by s 5(2) of the CLA (*id* at [22]). However, the court went on to hold that s 5(2) of the CLA was not applicable to the WA Judgment; instead, s 3(2)(*f*) of the RECJA was applicable and was decisive of the issue before the court.

63 In order to better illustrate the unusual approach of this court in *Burswood Nominees* in holding that s 3(2)(*f*) of the RECJA ousted the application of s 5(2) of the CLA in relation to the WA Judgment, we shall first set out below the relevant provisions of the CLA and the RECJA, and then state the existing legal position on these provisions as a backdrop to our analysis of *Burswood Nominees*.

64 Sections 5(1) and 5(2) of the CLA provide as follows:

> **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.
>
> (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.

65 Section 3(2)(*f*) of the RECJA provides as follows:

> Restrictions on registration.
>
> (2) No judgment shall be ordered to be registered under this section if —
>
> …
>
> (*f*) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court [*ie*, the Singapore courts].

66 In *Burswood Nominees*, Liao's argument on the applicability of s 5(2) of the CLA to the WA Judgment was summarised and rejected by this court as follows:

> 22 This resolution of the first issue [*viz*, that the cause of action upon which the WA Judgment was based was a gambling debt] left no question that s 5(2) of the CLA would have prevented Burswood from recovering the money under Liao's dishonoured cheque had Burswood's claim been brought in a Singapore court in the first instance. The question that followed was whether s 5(2) would apply where Burswood's claim had been brought and adjudicated upon in a foreign court.
>
> 23 In this regard, the analysis proffered by Liao was as follows. Section 5(2) of the CLA would have barred the Singapore courts from entertaining Burswood's action to recover the money due under the dishonoured cheque. An exception to registration under s 3(2)(f) of the RECJA is where

a foreign judgment was "in respect of a cause of action which for reasons of public policy or for some other similar reason *could not have been entertained by the registering court*" [emphasis added]. Since the Australian judgment [*ie*, the WA Judgment] was in respect of a cause of action which for reasons of public policy could not have been entertained by the registering court in Singapore under s 5(2) of the CLA, s 3(2)(f) of the RECJA would preclude registration of the Australian judgment.

24 For reasons that we will elaborate upon in the next portion of this judgment, we found that this argument was misconceived. ***In our evaluation, s 5(2) of the CLA and s 3(2)(f) of the RECJA encapsulate different standards of the public policy defence. While s 5(2) of the CLA elucidates Singapore's domestic public policy on the enforcement of gambling debts, a rule of our public policy as it applies to registration of foreign judgments under the statute in question is clearly different. Section 3(2)(f) of the RECJA requires a higher threshold of public policy to be met in order for registration of a foreign judgment to be refused***. As such, we could not countenance Liao's attempt to get around s 3(2)(f) of the RECJA by arguing that s 5(2) of the CLA would have precluded this court from entertaining Burswood's cause of action.

[emphasis added in bold italics]

67 It should be noted that, although this court held that an action in Singapore on *Liao's dishonoured cheque* would have been barred by s 5(2) of the CLA (*id* at [22]), it did not (at [24] of its judgment) decide whether an action in Singapore based on *the WA Judgment* would have been similarly barred. Instead, it decided, curiously, that Liao was not entitled to make that argument (*viz*, that an action in Singapore on the WA Judgment would have been barred by s 5(2) of the CLA) because Burswood's application was for the WA Judgment to be registered and was thus to be determined on the basis of s 3(2)(*f*) of the RECJA.

68 At [25] of *Burswood Nominees*, the court said:

In our view, the crucial issue in the present case was whether registration of the [WA] [J]udgment was contrary to public policy considerations under s 3(2)(f) of the RECJA. Counsel for both parties were unable to point us to any local cases dealing specifically with this issue. It is thus appropriate to begin [by examining] the approach taken by foreign courts in some detail.

The court duly examined (*id* at [26]–[31]) the approaches of foreign courts, including the approach of the Ontario Court of Appeal in *Boardwalk Regency Corp v Maalouf* (1992) 88 DLR (4th) 612 ("*Boardwalk Regency*"). It concluded (at [32] of *Burswood Nominees*) as follows:

A survey of these cases made it apparent that *there is a higher standard of public policy in operation when a forum court is faced with a foreign judgment, as opposed to a domestic issue being litigated for the first time in the forum court*. Foreign courts appear very reluctant to invoke the expedient of "public policy" to justify a refusal to recognise a foreign judgment, even if their domestic public policy would have precluded enforcement of the underlying claim. [emphasis added]

69 It would appear that, in the mind of the court, "a higher standard of public policy in operation [with regard to] … a foreign judgment" (*ibid*) actually meant the *opposite*, for the court said (see *Burswood Nominees* at [41]):

… [W]e concurred with Burswood's submissions that *public policy in the conflict of laws operates*

with less vigour than public policy in the domestic law. As such, we determined that Liao would have to surmount the higher public policy threshold in order to prevail upon us to refuse registration of the [WA] [J]udgment on grounds of public policy. [emphasis added]

70 At [46], the court concluded as follows:

We did not think that there were any public policy grounds militating against registration of the [WA] [J]udgment which would offend a fundamental principle of justice or a deep-rooted tradition of Singapore. Neither did we have any evidence before us to indicate that the general community in Singapore would be offended by the registration of a foreign judgment on a gambling debt that was incurred in a licensed casino. If anything, we were of the opinion that the prevalent conception of good morals in the Singaporean community at large would be against Singaporeans who ran up gambling debts in overseas jurisdictions and sought to evade their responsibility for those debts when judgment had been issued against them.

71 As much of what this court said in the passages quoted at [68]–[70] above is merely a restatement of what the Ontario Court of Appeal said in *Boardwalk Regency* ([68] *supra*), it is useful to know what was actually decided in that case. We should also point out that, in *Burswood Nominees*, this court appeared to rely as well on the Malaysian High Court case of *The Aspinall Curzon Ltd v Khoo Teng Hock* [1991] 2 MLJ 484 ("*The Aspinall Curzon*"), which we shall now discuss.

7 2 *The Aspinall Curzon* concerned a judgment debtor's application to set aside the registration of an English judgment based on a gambling debt, which judgment had been registered under s 4 of the Reciprocal Enforcement of Judgments Act 1958 (Act 99 of 1958) (1972 Rev Ed) (M'sia) ("the 1958 Malaysian Act"), the then Malaysian equivalent of s 4 of the REFJA (it should, be noted, however, that the 1958 Malaysian Act applied to both Commonwealth judgments and non-Commonwealth foreign judgments whereas the REFJA applies only to non-Commonwealth foreign judgments). The judgment debtor sought to rely on s 26 of the Civil Law Act 1956 (Act 67 of 1956) (1972 Rev Ed) (M'sia) ("Malaysia's Civil Law Act"), the then Malaysian equivalent of s 5 of the CLA, to argue, *vis-à-vis* s 5(1)(*a*)(v) of the 1958 Malaysian Act (the then Malaysian equivalent of s 5(1)(*a*)(v) of the REFJA), that it would be contrary to public policy in Malaysia to enforce the English judgment. Eusoff Chin J rejected that argument on the ground that s 26 of Malaysia's Civil Law Act "[was] not meant to apply to gaming or wagering in any premises run by a company licensed by the Finance Minister under s 27A of the Common Gaming Houses Act 1953 [(Act 289 of 1953) (1983 Rev Ed) (M'sia)]" (*id* at 486).

73 With respect, in coming to the above conclusion, the Malaysian High Court did not take into account the fact that the plaintiff in *The Aspinall Curzon* did not actually have the requisite licence. More importantly, that case concerned s 5(1)(*a*)(v) of the 1958 Malaysian Act, which, as we have just mentioned, corresponded to s 5(1)(*a*)(v) of the REFJA. The public policy objection set out in s 5(1)(*a*)(v) of the REFJA is *different* from the public policy objection contained in s 3(2)(*f*) of the RECJA – the objection in the former is that "the *enforcement of the judgment* would be contrary to public policy in [Singapore]" [emphasis added] (see s 5(1)(*a*)(v) of the REFJA), whereas the objection in the latter is that "the judgment was in respect of a *cause of action* which for reasons of public policy … could not have been entertained by [a Singapore] court" [emphasis added] (see s 3(2)(*f*) of the RECJA; see also the analysis of the difference between this provision and s 5(1)(*a*)(v) of the REFJA in Yeo Tiong Min, "Statute and Public Policy in Private International Law: Gambling Contracts and Foreign Judgments" (2005) 9 SYBIL 133 ("Statute and Public Policy in Private International Law") at 133–134 and 136–137). The decision in *The Aspinall Curzon* therefore does not, in our view, show that the WA Judgment in *Burswood Nominees* was not "in respect of a cause of action which for reasons of public policy … could not have been entertained by [a Singapore] court" for the purposes

of s 3(2)(*f*) of the RECJA. For these reasons, we do not consider *The Aspinall Curzon* to be a relevant authority.

The decision in Boardwalk Regency

74 Turning now to *Boardwalk Regency*, this court discussed the case in the following terms at [31] of *Burswood Nominees*:

> … [T]he Canadian courts have evinced a reluctance to refuse recognition of foreign judgments. In *Boardwalk Regency* …, the Ontario Court of Appeal was faced with a New Jersey judgment on a dishonoured cheque written to cover gambling debts. The Ontario Court of Appeal noted that, thus far, Ontario courts had generally refused to allow the recovery of foreign gambling debts on the grounds of public policy. It nevertheless went on to enforce the foreign judgment, saying (at 616 and 618):
>
> > Where the foreign law is applicable, Canadian courts will generally apply that law even though the result may be contrary to domestic law. Professor Castel's discussion [in *Canadian Conflict of Laws* (2nd Ed, 1986)] of public policy regarding the application of foreign law or the enforcement of a foreign judgment is helpful in this respect (para 91, pp 153–9):
> >
> > …
> >
> > *In the conflict of laws, public policy must connote more than local policy as regards internal affairs*. It is true that internal and external public policy stem from the national policy of the forum but they differ in many material respects. Rules affecting public policy and public morals in the internal legal sphere need not always have the same character in the external sphere. *Also, there should be a difference of intensity in the application of the notion of public policy depending upon whether the court is asked to recognize a foreign right or legal relationship or to create or enforce one based on some foreign law*. Public policy is relative and in conflicts cases represents a national policy operating on the international level.
> >
> > *If foreign law is to be refused any effect on public policy grounds, it must at least violate some fundamental principle of justice, some prevalent conception of good morals, or some deep-rooted tradition of the forum* …
>
> The ethics or morality of licensed gambling abroad, and the recovery of gambling debts incurred in jurisdictions where gambling is legal, are best left to a community standard. There is nothing to indicate that the general Canadian public would be offended by the enforcement of foreign judgments for debts incurred in jurisdictions where commercial gambling is licensed and legal.
>
> [emphasis in original]

75 In our view, a closer examination of the legal matrix in *Boardwalk Regency* shows that the Ontario Court of Appeal's statement (at 616) that public policy in conflict of laws cases represented national public policy operating at the international level was enunciated against the backdrop of the Gaming Act, RSO 1980, c 183 (Ontario) ("the 1980 Ontario Gaming Act"), which was construed by the Ontario Court of Appeal as having an effect quite different from that of s 5(2) of the CLA. In *Boardwalk Regency*, Lacourcière JA said (at 614):

… [T]he [1980 Ontario Gaming Act], as amended, (now R.S.O. 1990, c. G.2), which was never intended to apply to gaming transactions in other jurisdictions and cannot be given extraterritorial effect, is not applicable. It matters not, in my opinion, whether the statute renders the gaming agreement void or whether it merely prevents recovery on the security given, since *the [1980 Ontario Gaming Act] applies only to domestic, as opposed to foreign agreements*. *Furthermore, the Act does not express public policy so as to preclude the enforcement in Ontario of a judgment obtained in the State of New Jersey, where the debt was legally incurred originally*. [emphasis in original omitted; emphasis added]

76 In a similar vein, Carthy JA stated (*id* at 620–622):

… [Sections 1 and 4 of the 1980 Ontario Gaming Act] do not reach into the New Jersey litigation and the only question is whether there is any basis in the language of the sections to refuse to enforce a judgment, the factual basis [of] which was credit … extended in association with gaming. The trial judge found that the legislature has declared a public policy saying, in effect: "We do not like gambling and do not like to encourage persons to lend money for that purpose."

There is no doubt that public policy can be a basis for denying recovery under a foreign judgment. At common law a foreign judgment will not be recognized or enforced in Canada if its recognition or, as the case may be, enforcement, would be contrary to public policy … However, the mere existence of the [1980 Ontario] Gaming Act and its apparent restraints upon gambling contracts is not necessarily a reflection of public policy. The Act does not purport to have extraterritorial effect. The legal issue to be addressed is whether the language of the [1980 Ontario] Gaming Act, apart from its direct impact on domestic contracts, is to be taken as an expression by the legislature which bears the mantle of public policy to the point of making it offensive to participate in enforcement of the foreign judgment. It cannot be every statutory statement or prohibition which raises this defence or little would be left of the principle of comity underlying conflict of laws jurisprudence.

…

The common ground of all expressed reasons for imposing the doctrine of public policy is essential morality. This must be more than the morality of some persons and must run through the fabric of society to the extent that it is not consonant with our system of justice and general moral outlook to countenance the conduct, no matter how legal it may have been where it occurred. If that be so, the [1980 Ontario] Gaming Act must be viewed in the context of the community's sense of morality. An important element of that sense of morality is what the community has consensually determined is not to be tolerated, as found in the Criminal Code [RSC 1985, c C-46 (Can)]. The [1980 Ontario] Gaming Act may reflect that general morality or may, upon analysis, appear to have a very narrow focus related to recovery of debts with no present relevance as a moral statement.

[emphasis in original omitted]

77 It is clear from these passages that the reason why both Lacourcière JA and Carthy JA could not find a public policy ground for refusing to enforce the New Jersey judgment in Ontario was that the 1980 Ontario Gaming Act had no extraterritorial effect and "[did] not express public policy so as to preclude the enforcement in Ontario of [the] judgment obtained in the State of New Jersey, where the debt was legally incurred originally" (*id* at 614 *per* Lacourcière JA). Both judges then applied the conflict of laws principle (which is a common law principle) that a domestic court should give effect to a foreign judgment unless it was contrary to public policy to do so.

78 Arbour JA dissented on a ground which was not relevant to the appeal before this court in *Burswood Nominees* ([10] *supra*), but he also made it clear that, as s 4 of the 1980 Ontario Gaming Act did not have extraterritorial effect, whether there was a public policy against giving effect to the New Jersey judgment depended on the position at common law. Arbour JA stated (see *Boardwalk Regency* at 627–628 and 631–632):

> … [T]he action on the New Jersey judgment, or on the debt itself, is governed by the law of the contract and thus escapes the provisions of the [1980 Ontario] Gaming Act … *The [1980 Ontario] Gaming Act does not have extraterritorial application and therefore does not stand in the way of recovery in Ontario for a debt validly incurred under New Jersey law*.
>
> This brings me to the central issue in this case of whether the enforcement of the New Jersey judgment is against public policy in Ontario. Even if legally entered into in a foreign jurisdiction, contracts will not be enforced by Ontario courts if they are contrary to public policy or morality … Of course, the burden is on the [party] resisting the application of the foreign law to show that its application [*ie*, the application of the foreign law in question] is contrary to Ontario public policy. *Generally, the doctrine of public policy should be applied sparingly and with caution: Canadian Acceptance Corp. Ltd. v. Matte* (1957), 9 D.L.R. (2d) 304, [1956–60] I.L.R. ¶ 43,423, 22 W.W.R. 97 (Sask. C.A.); *Block Bros. Realty Ltd. v. Mollard* (1981), 122 D.L.R. (3d) 323, [1981] 4 W.W.R. 65, 27 B.C.L.R. 17 (C.A.). Craig J.A. remarked in that case that defining public policy [was] a perplexing task which involve[d] many variables and subjective factors. I agree that *contracts valid under foreign law, and even more so contracts valid in another Canadian jurisdiction, should be enforced unless it would be contrary to our conception of essential justice or morality to do so, or unless enforcement would be an affront to the local social order*. This is embodied in the concept of public policy.
>
> This concept of public interest or public policy should not, however, be construed solely in moral terms. There has been a legitimate difference of opinion expressed in recent years … as to whether contemporary Canadian moral standards are so offended by gambling that it would be against public policy to enforce a foreign judgment for a gambling debt. …
>
> …
>
> The [1980 Ontario] Gaming Act declares void a contract or [an] agreement entered into in Ontario by way of gaming or wagering; it also prohibits recovery of money won upon a wager (s. 4). Yet, betting or gaming is not, in itself, illegal or criminal in Ontario. It would not be sound public policy, in my opinion, to permit recovery of a debt incurred outside Ontario under circumstances that would be criminal under the same circumstances in Ontario, and yet to deny recovery for gambling debts legally incurred here. To decide otherwise, in my opinion, is to force Ontario public policy, as expressed in part in the Criminal Code of Canada [RSC 1985, c C-46 (Can)], to yield to foreign law.
>
> [emphasis in original omitted; emphasis added]

79 In this connection, we should point out that the decision of the House of Lords in *Hill v William Hill (Park Lane) Ld* [1949] AC 530 ("*Hill*") on the construction of s 18 of the Gaming Act 1845 (c 109) (UK) ("the 1845 UK Gaming Act"), which corresponds to s 4 of the 1980 Ontario Gaming Act as well as ss 5(1) and 5(2) of the CLA, was not considered by the Ontario Court of Appeal in *Boardwalk Regency*. In *Hill*, the House of Lords decided (by a majority), overruling all previous authorities, that s 18 of the 1845 UK Gaming Act had two limbs, each of which was to be given effect to separately. The second limb of this section (which corresponds to s 5(2) of the CLA and the second limb of s 4 of

the 1980 Ontario Gaming Act) had the effect of preventing the recovery of money alleged to be won upon any gaming or wagering contract, *wherever that contract was entered into*. In the words of Lord Normand, the second limb of s 18 of the 1845 UK Gaming Act was meant "to strike at *any* suit for recovering money or valuables won by wagering" [emphasis added] (see *Hill* at 565). In a separate judgment, Lord MacDermott said that "the court must look to the reality of the transaction and come to a finding as to what the true intention was" (*id* at 574). He also suggested that the court must not allow evasion and circumvention of s 18 of the 1845 UK Gaming Act (*id* at 577). These two statements by Lord MacDermott were cited with approval by Selvam J in *Star Cruise Services Ltd v Overseas Union Bank Ltd* [1999] 3 SLR 412 ("*Star Cruise*") at [42].

80 The legal position in Ontario as stated in *Boardwalk Regency* was the same as that which existed in England *before* the decision of the majority of the House of Lords in *Hill*, when the English courts mistakenly construed the second limb of s 18 of the 1845 UK Gaming Act as merely a consequence of the first limb, and not as an independent limb which was to be given effect to separately. If the Ontario Court of Appeal in *Boardwalk Regency* had understood s 4 of the 1980 Ontario Gaming Act to have the same effect as its English equivalent (*viz*, s 18 of the 1845 UK Gaming Act) as interpreted by the majority in *Hill*, the court might, on this interpretation of s 4 of the 1980 Ontario Gaming Act, have dismissed the action brought in Ontario on the New Jersey judgment, in which case there would have been no necessity for the court to determine the appeal on the basis of whether there was a public policy in Ontario which precluded the enforcement of foreign judgments based on gambling debts. Further, if the 1980 Ontario Gaming Act had been construed in *Boardwalk Regency* in the way that s 18 of the 1845 UK Gaming Act was construed by the majority in *Hill*, the Ontario Court of Appeal might well have arrived at the conclusion that the Ontario statute did encapsulate a public policy against the recovery of gambling debts, wherever incurred (which public policy does, in our view, feature in s 5(2) of the CLA (see [112] and [114] below)). On that basis, the trial judge in *Boardwalk Regency* would then have been correct in ruling that the 1980 Ontario Gaming Act "declared a public policy saying, in effect: 'We do not like gambling and do not like to encourage persons to lend money for that purpose …'" (*id* at 620).

Is gambling contrary to Singapore's public policy?

The historical context

(1) The 1845 UK Gaming Act: Its effect and policy considerations

81 Turning to the position in Singapore, in analysing whether s 5(2) of the CLA reflects a public policy against gambling, it is helpful to have regard to the stance adopted in the UK and India as their gaming statutes influenced the shape which ss 5(1) and 5(2) of the CLA currently takes today. In *Star Cruise*, Selvam J very helpfully reviewed the history and public policy of gaming legislation in the UK leading to the enactment of the 1845 UK Gaming Act. In his discussion, he referred to (*id* at [22]–[28]):

(a) the Unlawful Games Act 1541 (c 9) (UK), which was considered to be "the origin of our Common Gaming Houses Act (Cap 49[, 1985 Rev Ed])" (*id* at [22]);

(b) the Gaming Act 1664 (c 7) (UK), which sought to control "gaming and betting *on credit*" [emphasis added] (*ibid*) by providing, *inter alia*, that a person who lost at gaming activities could not be compelled to pay any losses in excess of £100; and

(c) the Gaming Act 1710 (c 19) (UK).

He noted that even the last-mentioned statute failed to abate the evil of gambling (see *Star Cruise* at [25]), whereupon the UK legislature took the "bold step" (*ibid*) of enacting the 1845 UK Gaming Act, with the result that (*ibid*):

> *All* contracts and agreements by way of gaming or wagering were naughted by a single stroke of [the] pen. Valid gaming or wagering contracts became a thing of the past. [emphasis added]

82 Selvam J summarised his discussion of the UK's gaming legislation as follows (see *Star Cruise* at [28]):

> Public policy … was the purpose of the [UK's] Gaming Acts. The policy was to suppress gambling on credit and protect property from capture by gamblers. It was also to declare that the courts of justice [were] out of bounds to gamblers and that the courts [would] not settle or collect gambling debts. The courts exist[ed] for more important business and [would] not assist those who ma[d]e gambling their business.

83 In essence, Selvam J emphasised in the above quotation that the public policy underlying the UK's gaming legislation leading to (and including) the 1845 UK Gaming Act was twofold: *first*, to suppress gambling on credit (and not gambling *per se*) and protect property from capture by gamblers; and, *second*, to declare that the courts of justice were closed to gamblers and that the courts would not help to settle or collect gambling debts. In particular, Selvam J noted that the public policy of clamping down on gambling on credit (as opposed to gambling *per se*) had subsisted in England for "some 450 years" (*id* at [68]).

84 Selvam J's view in *Star Cruise* echoes what Viscount Simon said in *Hill* ([79] *supra*) at 548–549 apropos the policy of the 1845 UK Gaming Act, which was as follows:

> When the long history of [the] legislation to discourage gaming in this country is considered, it is difficult to suppose that the legislature in 1845 did not realize that the object in view would not be attained merely by enacting that bets could not be recovered as such. The [1845 UK Gaming Act] begins with a preamble reciting that previous legislation had not proved completely effective to prevent the mischiefs arising from this cause. I would accept without further comment the passage in Fletcher Moulton L.J.'s judgment [in *Hyams v Stuart King (A Firm)* [1908] 2 KB 696 at 713–714] where he says: "One cannot read the [1845 UK Gaming Act] without perceiving that *it was a very serious attempt on the part of the legislature to put down wagering*, and I decline to think that such an obvious and fatal blot was permitted to exist in it, which would well-nigh neutralize its practical effect, when I find language used which is perfectly apt to meet the case and which to my mind can fairly bear no other interpretation than that which would thus render it effective." [emphasis added]

85 A clearer picture of the events leading up to the enactment of the 1845 UK Gaming Act can be found in *Smith & Monkcom: The Law of Gambling* (Stephen Monkcom ed) (Tottel Publishing, 3rd Ed, 2009), where it is stated (at para 0.27):

> In 1844 the [UK] House of Commons appointed a Select Committee 'to enquire into the existing statutes against gaming of every kind, to ascertain to what extent these statutes are evaded, and to consider whether any and what amendment should be made in such statutes.' … [T]he Committee came to the conclusion that the laws against gaming houses needed strengthening, and this was one of the principal purposes of the [1845 UK Gaming Act]. In addition, the Committee concluded that the effect of the existing legislation was to provide protection against the damaging consequences of gambling to the wealthier members of society who were least in

need of it, but to 'leave comparatively unprotected those of an inferior class, who may be sufferers from apparent small losses.' This conclusion, together with the perception that too much court time was being absorbed in litigation over gaming debts and wagers, led to the second principal provision of the 1845 [UK Gaming] Act, contained in s 18 which rendered all gaming and wagering debts void and unenforceable.

(2) Policy considerations underlying India's Act No 21 of 1848

86 India enacted Act No 21 of 1848 ("the 1848 Indian Act") with similar objectives as those underlying the 1845 UK Gaming Act. The 1848 Indian Act was based on and had the same substantive effect as s 18 of the 1845 UK Gaming Act (*per* Sproule J in *Ralli v Angullia* (1917) 15 SSLR 33 at 87). It was enacted to abrogate the decision of the Privy Council in *Ramloll Thackoorseydass v Soojumnull Dhondmull and Mootlan Ohund Cuppoorchund* (1848) 4 Moore's Ind App 212, where it was held that wagering contracts were not illegal or contrary to public policy as the 1845 UK Gaming Act had no application in India (see also the Privy Council's decision in *Kong Yee Lone & Co v Lowjee Nanjee* (1901) 28 Ind App 239). The public policy encapsulated in the 1848 Indian Act was therefore *identical* to the public policy of the 1845 UK Gaming Act (*per* Selvam J in *Star Cruise*).

(3) Gaming legislation in Singapore: A brief overview

87 The 1848 Indian Act applied to the Straits Settlements as well (see G W Bartholomew, Elizabeth Srinivasagam & Pascal Baylon Netto, *Sesquicentennial Chronological Tables of the Written Laws of the Republic of Singapore 1834–1984* (Malayan Law Journal Pte Ltd, 1987) at pp x1ii and 30). It was later replaced by s 7(1) of the Civil Law Ordinance 1909 (SS Ord No 8 of 1909) ("the CLO") in 1909 (see the decision of the Straits Settlement Court of Appeal ("the SSCA") in *Ralli v Angullia* at 60, 87 and 89). Section 7(1) of the CLO stated as follows:

> All contracts or agreements, whether by parol or in writing, by way of gaming or wagering shall be null and void; and 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 shall have been deposited in the hands of any person to abide the event on which any wager shall have been made …

88 The current ss 5(1) and 5(2) of the CLA are, collectively, a re-enactment of s 7(1) of the CLO, which, as noted in *Ralli v Angullia*, was itself "a combination of the [1848] Indian Act … with part of Section 18 of [the 1845 UK Gaming Act]" (at 60 *per* Woodward J; see also *id* at 87 *per* Sproule J). (And, as we have just mentioned at [86] above, s 18 of the 1845 UK Gaming Act had the same substantive effect as the 1848 Indian Act (*per* Sproule J in *Ralli v Angullia* at 87).) The public policy encapsulated in s 5(2) of the CLA has subsisted for more than 160 years (from the time of the 1848 Indian Act) and still subsists today, as is evident from the continued existence of s 5(2) itself. This public policy is as follows (*per* Selvam J in *Star Cruise* at [68] apropos s 6 of the Civil Law Act (Cap 43, 1994 Rev Ed), the then equivalent of s 5 of the CLA):

> … [T]he purpose of s 6 [of the Civil Law Act (Cap 43, 1994 Rev Ed) ("the 1994 Act"), which is now s 5 of the CLA] is not to prohibit games and wagering or make them illegal. *Putting aside the provisions of the Common Gaming Houses Act [(Cap 49, 1985 Rev Ed)] all gaming and wagering are lawful. At the same time they are not valid. They are all void. Section 6 [of the 1994 Act] recognises the social and entertainment value of gaming and betting and does not seek to suppress them* … All gaming and wagering debts are debts of honour. The law does not interfere with or proscribe honour among the players. There is no prohibition against payment of the loss provided the debt is met with honest money. However, what the law does object [to] is [gamblers] coming to the courts to settle their disputes and it manifests its objection by making

all contracts and agreements by way of gaming void. In the result they are devoid of all legal effect. Gaming debts are not legal debts. The courts of justice are out of bounds to claims based on gaming or wagering [debts] because no action can be brought or maintained to enforce them. The doors of justice are closed to them. *Sections 6(2) and (5) [of the 1994 Act, which correspond to s 5(2) and s 5(6) respectively of the CLA] 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*. [emphasis added]

However, in *Star City (CA)* ([17] *supra*) and *Burswood Nominees* ([10] *supra*), this court took a diametrically different view on gambling.

The view on gambling taken in Star City (CA) *and* Burswood Nominees

(1) The court's stance

89 In *Burswood Nominees*, this court stated:

> 44 … [W]e observed in *Star City* [*(CA)*] … at [30] and [31] that:
>
> > [Singapore] now recognises that gambling can be permitted for its entertainment value if it is strictly controlled and regulated by the relevant authorities. *Gambling 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 [exist] in Singapore* …
> >
> > However, *what is objectionable is [the] courts being 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 machinery of the courts cannot be used indirectly to legitimise the recovery of moneys won upon wagers overseas when similar relief would be refused for moneys won upon wagers in Singapore.
>
> 45 As we recognised two years ago [in *Star City (CA)*], *gambling* per se *is not contrary to the public interest in Singapore*. *To date, the stand [which] we took in* Star City [(CA)] *has been bolstered by the fact that Singapore's societal attitudes towards gambling have evolved even further, as evinced by the fact that the Government is giving serious consideration to the idea of building a casino on the island of Sentosa*. …
>
> 46 We did not think that there were any public policy grounds militating against registration of the Australian judgment [*ie*, the WA Judgment as defined at [60] above] which would offend a fundamental principle of justice or a deep-rooted tradition of Singapore. *Neither did we have any evidence before us to indicate that the general community in Singapore would be offended by the registration of a foreign judgment on a gambling debt that was incurred in a licensed casino*. If anything, we were of the opinion that the prevalent conception of good morals in the Singaporean community at large would be against Singaporeans who ran up gambling debts in overseas jurisdictions and sought to evade their responsibility for those debts when judgment had been issued against them.
>
> [emphasis added]

90 It may be noted that, at [44] of *Burswood Nominees* (reproduced in the above quotation), this court did not quote the entire passage at [30] of *Star City (CA)*. The full version of that paragraph (*ie*, [30] of *Star City (CA)*) reads:

> What then is this aspect of local public policy that militates against the recovery of moneys won in foreign wagering contracts which are valid and enforceable overseas? It is clear that gaming and wagering contracts were never considered to be illegal [at] common law. The distinction which the law makes between wagering contracts and others is therefore entirely the creation of statute. In line with the position in England, the Singapore legislature has long departed from the historical position that gambling and gaming, especially when on credit, is a social vice that has to be eradicated at all costs. It now recognises that gambling can be permitted for its entertainment value if it is strictly controlled and regulated by the relevant authorities. *Gambling 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 [exist] 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 [as] the transaction is indeed a genuine loan and one which is valid and enforceable according to that foreign law. [emphasis added]

91 The italicised portions of the quotations at [89] and [90] above set out the court's reasons for taking the view, in *Burswood Nominees* and *Star City (CA)* respectively, that gambling was no longer contrary to Singapore's public policy. With respect, we do not think this view was justified by either the evidence before the court in those two cases or the policy considerations encapsulated in s 5(2) of the CLA, as we shall show below.

(2) Our views on the court's stance

92 In our view, it seems counter-intuitive to assert that "[g]ambling per se is no longer considered to be contrary to the public interest [of Singapore]" (see [30] of *Star City (CA)*, which was quoted in *Burswood Nominees* at [44]). The 1848 Indian Act was extended to Singapore because gambling was regarded as being contrary to the public interest of Singapore. As mentioned at [88] above, this policy stance has subsisted ever since, as can be seen from the presence of s 5(2) of the CLA (and its predecessor provisions) as well as the various other laws in the statute book criminalising gambling, especially the Common Gaming Houses Act (Cap 49, 1985 Rev Ed), whose earliest predecessor appears to have been India's Act No 13 of 1856 (see Choor Singh, *Gaming in Malaya: A Commentary on the Common Gaming Houses Ordinance, 1953 of the Federation of Malaya and the Common Gaming Houses Ordinance (Cap. 114) of the State of Singapore* (Malayan Law Journal Ltd, 1960) at p 9 and Roland Braddell, *Common Gaming Houses: A Commentary on Ordinance No 45 (Common Gaming Houses)* (Kelly and Walsh Limited, 1932) at p 1).

93 In *Star City (CA)*, this court justified its view that gambling was no longer contrary to Singapore's public interest partly on the basis that gambling *per se* was not illegal at common law and partly on the basis that "various forms of legalised gaming and gambling … such as 4-D, Toto, the Big Sweep, the Singapore Turf Club, etc" (*id* at [30]) existed in Singapore; this reasoning was affirmed in *Burswood Nominees*. With respect, although gambling is not illegal at common law, s 5(1) of the CLA makes all wagering or gaming contracts entered into locally null and void, while s 5(2) makes all gambling debts, wherever incurred, irrecoverable by an action in Singapore. As for the existence of legalised gambling in Singapore, this does not necessarily mean or imply that *all other forms of gambling*, *ie*, gambling unregulated by statute, are no longer against Singapore's public policy. It simply means that *regulated* gambling will not be regarded as being contrary to public policy in this country (because, *inter alia*, the conditions under which such gambling takes place are regulated so as to minimise and/or reduce the incidence of organised gambling being controlled by syndicates, and the attendant law and order problems).

94 In *Burswood Nominees*, this court held that its view – *viz*, that gambling was no longer contrary

to Singapore's public policy – was reinforced by the Government's decision to give "serious consideration to the idea of building a casino on the island of Sentosa" (*id* at [45]). The court viewed this development as evidence that Singapore's societal attitudes to gambling had changed to the extent that gambling was no longer regarded as objectionable. With respect, we find it difficult to agree with this conclusion, which was merely an expression of opinion that was not supported by any evidence before the court (other than the Government's decision to seriously consider building a casino on Sentosa). If anything, the elaborate legal framework provided under the Casino Control Act (Cap 33A, 2007 Rev Ed) ("the current CCA"), which came into force on 31 October 2007, to control and regulate casino gambling suggests the contrary.

95 The introduction of casino gambling in Singapore under strict controls does not, in our view, abrogate the public policy encapsulated in s 5(2) of the CLA. The Government explained clearly in Parliament the rationale of its decision to allow this form of gambling. During the debate in Parliament on 18 April 2005 on the proposal to allow integrated resorts with casinos to be developed in Singapore, the Minister for Home Affairs, Mr Wong Kan Seng ("Mr Wong"), made the following statement (see *Singapore Parliamentary Debates, Official Report* (18 April 2005) vol 80 at cols 96–97):

> … [I]t [*ie*, the proposal to allow integrated resorts with casinos to be built in Singapore] is finally a judgement call, and on the balance of probabilities, *we need to act in favour of what brings more benefit to Singapore and Singaporeans*. There is no doubt that considerable risks are involved. The robust debates we have had in the media and even in Cabinet show that most of us are aware of that. *Having heard all the arguments and studied the economic case, putting aside my personal views, and taking the national perspective, I thought seriously about the options we have and the cost of having or not having an Integrated Resort with a casino*. Personally, I am still ambivalent about having the casino. *But the significant economic and larger national interests at stake persuaded me that we must give the Integrated Resort with casino option a try*.
>
> The [Prime Minister] and Cabinet have taken a decision. I share in the collective responsibility for this decision. I will do everything possible to minimise any negative impact which may arise from the Integrated Resort with casino.
>
> [emphasis added]

96 The next day, the Minister Mentor, Mr Lee Kuan Yew, spoke in support of the proposal to allow integrated resorts with casinos to be developed in Singapore as follows (see *Singapore Parliamentary Debates, Official Report* (19 April 2005) vol 80 at cols 211 and 220):

> … [W]hen I was Prime Minister, I allowed the Turf Club to continue, Toto and 4 digits. … On several occasions, my business friends in Hong Kong suggested that Stanley Ho, who ran casinos in Macau, would be happy to start one in Singapore. I ruled it out. I did not want to undermine Singapore's work ethic and breed the belief that people can get rich by gambling, something that is impossible because the odds are against you. *I have not changed my mind [or] my basic values*. *But I have had to change my attitude to casinos in Singapore when [they are] part of an integrated resort*. They said 3%–5% [of the total floor area of an integrated resort]. It makes no difference whether it is 3%, 5% or 15%. *What is important is: will it be a total plus for the economy and is it worth the price we have to pay in social cost?*
>
> …

> … If I were the Prime Minister, and I was challenged … I would take every challenger on and set out to convince Singapore that this is right, that *the price is high, but the price of not having … Integrated Resorts is even higher*. This is your choice. Surely we must move forward and keep abreast of the top cities in Asia and the world.
>
> [emphasis added]

97 At a more general level, regulated casino gambling, when carried out as part of the larger business of an integrated resort which is intended to provide wholesome entertainment and leisure for the public, is perceived to generate *positive* gains for the economy. Controlled casino gambling may not be contrary to the legal policy of Singapore and also the public policy of this country (in so far as legal policy reflects public policy), but gambling in general, especially unregulated gambling at large and gambling on credit, is, in our view, contrary to Singapore's public policy. This is evident from the retention of s 5 of the CLA in the statute book.

98 To reiterate, the existence of *regulated* gambling is not inconsistent with unregulated gambling and gambling on credit being against public policy in Singapore. Furthermore, the court's affirmation at [45] of *Burswood Nominees* ([10] *supra*) of its earlier stand in *Star City (CA)* ([17] *supra*) – *viz*, that gambling *per se* is no longer contrary to Singapore's public policy – is also not justified in view of the *elaborate legislative and regulatory framework* set out in the current CCA, which was enacted by Parliament (initially as the Casino Control Act 2006 (Act 10 of 2006) ("the 2006 CCA")) to, *inter alia*, "make provision for the operation and regulation of casinos and gaming in casinos" (see the preamble to the 2006 CCA).

99 At the second reading in Parliament of the Casino Control Bill 2006 (Bill 3 of 2006) ("the Casino Control Bill"), Mr Wong explained the objectives of the proposed legislation in the following manner (see *Singapore Parliamentary Debates, Official Report* (13 February 2006) vol 80 ("*Singapore Parliamentary Debates* (13 February 2006)") at col 2318):

> … [T]he Casino Control Bill will provide the legislative and regulatory framework to help to ensure that criminal activities associated with casino operation do not take root in Singapore, and to mitigate the potential negative consequences of the casinos on our society.
>
> The Bill comprises 13 Parts and deals with the key aspects of regulating casinos in Singapore.
>
> It has three broad objectives. First, the Bill will provide for the setting up of the casino regulator with the necessary powers to enforce the regulatory regime. Second, the Bill will set out a regulatory regime for the casino operator and related business parties. Third, the Bill will provide for a number of social safeguards to protect vulnerable persons from casino gaming.

100 If gambling were not contrary to public policy in Singapore, such an extensive and detailed legislative and regulatory framework as that set out in the current CCA would not be necessary at all. Furthermore, if gambling in general were no longer contrary to Singapore's public policy, Parliament would have repealed s 5 of the CLA *in its entirety*. Parliament did not, however, do so. Instead, it restructured s 5 of the CLA to make ss 5(1) and 5(2) inapplicable to all forms of *regulated* gambling. Currently, s 5 of the CLA, as restructured, reads as follows:

> **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.

(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.

(3) Subsections (1) and (2) shall not be deemed to apply to any subscription or contribution, or agreement to subscribe or contribute, for or toward any plate, prize or sum of money to be awarded to the winner or winners of any lawful game, sport, pastime or exercise.

(3A) Subsections (1) and (2) shall not apply to —

(*a*) a contract for gaming that is conducted under the control or supervision of a person or an organisation that is exempted under section 24 of the Common Gaming Houses Act (Cap. 49) from the provisions of that Act in respect of such gaming;

(*b*) a contract for betting that is held, promoted, organised, administered or operated by a person or an organisation that is exempted under section 22 of the Betting Act (Cap. 21) from the provisions of that Act in respect of such betting, only if the betting takes place under the control or supervision of that person or organisation;

(*c*) a contract for betting that takes place on a totalisator conducted by or on behalf of the Singapore Totalisator Board or a turf club in accordance with an approved scheme; and

(*d*) a contract to participate in a private lottery promoted or conducted by the holder of a permit granted under section 4 of the Private Lotteries Act (Cap. 250).

(3B) In the case of a person or an organisation exempted under section 24 of the Common Gaming Houses Act in respect of any gaming conducted for or on behalf of another person or organisation, subsection (3A)(*a*) applies only if the contract is for gaming conducted by that person or organisation for or on behalf of that other person or organisation.

(3C) Subsection (3A)(*a*) shall not apply to any gaming conducted in premises owned or used by a private body exempted under the Common Gaming Houses Act.

(3D) In the case of a person or an organisation exempted under section 22 of the Betting Act in respect of any betting held, promoted, organised, administered or operated for or on behalf of another person or organisation, subsection (3A)(*b*) applies only if the contract is for betting held, promoted, organised, administered or operated by that person or organisation for or on behalf of that other person or organisation.

(3E) In subsection (3A) —

"contract" excludes a contract for or which involves —

(*a*) the lending of any money or other valuable thing for such gaming or wagering;

(*b*) the extension of any form of credit for such gaming or wagering; or

(*c*) the giving of security in respect of the act referred to in paragraph (*a*) or (*b*);

"private body" has the same meaning as [that] in any notification made under the Common Gaming Houses Act (Cap. 49) which exempts gaming conducted in premises owned or used

by a private body;

"private lottery" has the same meaning as [that] in the Private Lotteries Act (Cap. 250);

"totalisator", "Singapore Totalisator Board", "turf club" and "approved scheme" have the same meanings as [those] in the Singapore Totalisator Board Act (Cap. 305A).

(4) For the avoidance of doubt, this section shall not affect the validity or enforceability of any contract or agreement entered into by either or each party by way of business and the making or performance of which by any party constitutes an investment activity.

…

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.

101 Sections 5(3A)–5(3E) of the CLA form part of the recent amendments made to the CLA via s 201 of the current CCA, which amendments took effect on 2 April 2008. The definition of "contract" in s 5(3E) of the CLA reflects Parliament's concern about the potential harmful social effects of gambling *on credit* in particular. This concern was touched on at the second reading of the Casino Control Bill, where Mr Wong stated (see Singapore Parliamentary Debates (13 February 2006) at col 2329):

> For consistency, clause 201 of the [Casino Control] Bill [now s 201 of the current CCA] will make a related amendment to the [CLA] to also make enforceable … gambling contracts between patrons and other legal gambling operators in Singapore, such as the Singapore Pools [("Pools")] and the Singapore Turf Club [("Turf Club")]. *However, unlike the casino and junket operators, gambling contracts issued by the other legal operators, ie, Pools and Turf Club, that are based on credit shall continue to be unenforceable. This means that if Pools or Turf Club decides to take bets based on credit and if the patron subsequently defaults in payment, Pools or Turf Club will not be able to take the patron to court to reclaim the payment. This is to ensure that the local gambling operators do not promote gambling to locals by giving out credit*. [emphasis added]

102 The same concern is also reflected in s 108 of the current CCA, which is modelled on s 68 of the Casino Control Act 1991 (Vic). In essence, s 108 of the current CCA prohibits licensed casino operators from extending loans and credit to gamblers who are Singapore citizens or permanent residents *unless* they fall within the statutory definition of "premium player", *ie*, unless the Singapore citizen or permanent resident in question "maintains a deposit account with the casino operator with a credit balance of not less than $100,000 before the commencement of play by him in the casino" (see s 2(1) of the current CCA). In full, s 108 of the current CCA reads as follows:

Credit, etc.

108.—(1) Except to the extent that this section or regulations relating to credit allow, no casino operator, licensed junket promoter, agent of a casino operator or casino employee shall, in

connection with any gaming in the casino —

(*a*) accept a wager made otherwise than by means of money or chips;

(*b*) *lend money or any valuable thing*;

(*c*) *provide money or chips as part of a transaction involving a credit card*;

(*d*) *extend any other form of credit*; or

(*e*) except with the approval of the Authority [*ie*, the Casino Regulatory Authority of Singapore], wholly or partly release or discharge a debt.

(2) A casino operator may establish for a person a deposit account to which is to be credited the amount of any deposit to the account comprising —

(*a*) money;

(*b*) a cheque payable to the casino operator; or

(*c*) a traveller's cheque.

(3) The casino operator may issue to a person who establishes a deposit account and debit to the account chip purchase vouchers, cheques or money, not exceeding in total value the amount standing to the credit of the account at the time of issue of the vouchers, cheques or money.

(4) The casino operator may, in exchange for a cheque payable to the casino operator or a traveller's cheque, issue to a person chip purchase vouchers of a value equivalent to the amount of the cheque or traveller's cheque.

(5) A cheque accepted by the casino operator may, by agreement with the casino operator, be redeemed in exchange for the equivalent in value to the amount of the cheque of any one or more of the following:

(*a*) money;

(*b*) cheque payable to the casino operator;

(*c*) chip purchase vouchers;

(*d*) chips.

(6) The casino operator —

(*a*) shall, within the time specified by the Authority by notice in writing given to the casino operator for the purposes of this subsection, deposit with an authorised bank a cheque accepted by the casino operator under this section; and

(*b*) shall not agree to the redemption of such a cheque for the purpose of avoiding compliance with paragraph (*a*).

(7) Notwithstanding anything in this section, a casino operator or a licensed junket promoter

may provide chips on credit to a person —

(*a*) who is not a citizen or permanent resident of Singapore (as defined in section 116(9)); or

(*b*) who is a premium player [(as defined in section 2(1)),

if the casino operator or licensed junket promoter (as the case may be) and the person satisfy the requirements of any relevant controls and procedures approved by the Authority under section 138.

(8) Any —

(*a*) casino operator who contravenes subsection (1) or (6); or

(*b*) licensed junket promoter, agent of a casino operator or casino employee who contravenes subsection (1),

shall be —

(i) liable to disciplinary action, in the case of a casino operator, licensed special employee or licensed junket promoter; or

(ii) guilty of an offence, in any other case.

(9) Any person who —

(*a*) provides chips on credit to persons other than as permitted in subsection (7)(*a*) or (*b*) shall be deemed to be a moneylender for the purposes of the Moneylenders Act (Cap. 188); and

(*b*) lends money in accordance with this section shall be deemed not to be a moneylender for the purposes of the Moneylenders Act.

(10) In this section, "cheque" means a cheque (other than a traveller's cheque) that —

(*a*) is drawn on an account of an authorised bank for a specific amount payable on demand; and

(*b*) is dated but not post-dated.

103 Clearly, if gambling contracts issued by "*legal* gambling operators in Singapore, such as the Singapore Pools and the Singapore Turf Club" [emphasis added] (see *Singapore Parliamentary Debates* (13 February 2006) at col 2329) that are based on credit "shall continue to be unenforceable … to ensure that the local gambling operators do not promote gambling to locals by giving out credit" (*ibid*), the general position that gambling is against public policy must be unchanged.

104 As for the attitude of Singapore society towards gambling, the Government's consultative paper on the proposed licensing of casino gambling as part of an integrated resort generated enormous public discussion and concern about the long-term detrimental effects of gambling on the general public. These concerns were summarised by Mr Wong at the second reading of the Casino Control Bill as follows (see Singapore Parliamentary Debates (13 February 2006) at cols 2313–2314):

> In April [2005], the Government announced its decision to invite proposals to develop two Integrated Resorts with casinos in Singapore. This was debated over four days in Parliament during which many Members shared their concerns on gambling, stated their positions and made suggestions concerning casinos in Singapore. The Integrated Resorts [were] also a subject of vigorous public debate for over a year.
>
> There were many Singaporeans who supported the proposal for the Integrated Resorts as they will enhance Singapore's tourism appeal [*vis-à-vis*] other popular tourist destinations that are also reinventing themselves. The Integrated Resorts would provide a strong boost to our economy and create many new jobs for Singaporeans. *At the same time, having casinos could mean more people gambling and getting themselves – and their families – into trouble. Concerns were expressed that crimes, such as loan sharking, money laundering and prostitution, could increase and tarnish Singapore's reputation as a clean, safe and secure place and that casino gambling could also erode values such as thrift and hard work that have underpinned Singapore's success*.
>
> [emphasis added]

105 The Singapore public's concern about the harmful effects of gambling, as enunciated during the parliamentary debates on the Casino Control Bill (see the extract quoted in the preceding paragraph), has not abated since. This is evident from the reports titled "Survey on the Perceptions & Attitudes towards Gambling Issues in Singapore" which the National Council on Problem Gambling ("NCPG") published in, respectively, October 2006 ("the 2006 NCPG Report") and October 2007 ("the 2007 NCPG Report") (both of these reports are available at <http://www.stopproblemgambling.org.sg/research.html> (accessed 4 December 2009)). The 2007 NCPG Report covered 12 gaming activities, of which the following five activities were regarded by a "*large majority* of [the] respondents"[note: 16] [emphasis added] as "gambling rather than leisure activities":[note: 17]

(a) table games by local private gambling operators (93% of the respondents in 2007 regarded this as a "gambling" activity, an *increase* of 11% from 2006);

(b) table games in casinos, on cruise ships or in other countries (87% of the respondents in 2007 viewed this as a "gambling" activity, an *increase* of 6% from 2006);

(c) horse racing (88% of the respondents in 2007 saw this as a "gambling" activity, an *increase* of 12% from 2006);

(d) playing at jackpot machines in casinos, on cruise ships or in other countries (79% of the respondents in 2007 regarded this as a "gambling" activity, an *increase* of 3% from 2006); and

(e) online gambling (80% of the respondents in 2007 considered this to be a "gambling" activity, an *increase* of 5% from 2006).

106 On the other hand, the following four games were regarded by a majority of the respondents as "leisure" activities (as opposed to "gambling" activities):[note: 18]

(a) social gambling (*eg*, mahjong, card games involving money which are played among close friends and/or relatives, *etc*) (56% of the respondents in 2007 viewed this as a "leisure" activity);

(b) 4D (61% of the respondents in 2007 regarded this as a "leisure" activity);

(c) Toto (61% of the respondents in 2007 saw this as a "leisure" activity); and

(d) Singapore Sweep (62% of the respondents in 2007 considered this to be a "leisure" activity).

107 Significantly, the 2007 NCPG Report noted (at para 2.18) the following with regard to the public's perception of gambling:

> For both [the survey] in 2006 and [the survey] in 2007, *[a] large majority of [the] respondents felt that more should be done to address problem gambling in Singapore* in terms of helping those with gambling problems (2006: 97%, 2007: 95%) and educating the public on problem gambling (2006: 97%, 2007: 96%) *and that gambling will increase the social problems in Singapore if we do nothing now* (2006: 93%, 2007: 92%), with no significant changes in the proportion from 2006 to 2007 … [emphasis added]

108 From the above, it is apparent that the public in Singapore perceives "leisure" activities such as 4D and Toto (see [106] above) *very differently* from the "gambling" activities noted above at [105]. In this respect, it would be apposite to point out that, in *Star City (CA)* ([17] *supra*), this court based its view that "[g]ambling per se [was] no longer considered to be contrary to the public interest" (*id* at [30]) on the existence in Singapore of "various forms of legalised gaming and gambling … such as *4-D, Toto, the Big Sweep, the Singapore Turf Club*, etc" [emphasis added] (*ibid*). We earlier commented (at, *inter alia*, [91]–[93] above) that this conclusion in *Star City (CA)*, which was affirmed in *Burswood Nominees* (see the quotation at [89] above), is questionable. The surveys done by the NCPG in 2006 and 2007 also show that the very premise of this conclusion is wrong as the court did not consider the forms of gambling which the public regards as hard-core "gambling" activities, such as (see [105] above):

(a) table games by local private gambling operators;

(b) table games in casinos, on cruise ships or in other countries;

(c) playing at jackpot machines in casinos, on cruise ships or in other countries; and

(d) online gambling.

109 Furthermore, as the 2006 NCPG Report and the 2007 NCPG Report show, the prevalent public sentiment *vis-à-vis* these hard-core "gambling" activities is a *negative* one, *viz*, a large majority of the public in Singapore are of the view that *uncontrolled* gambling and gambling at large would (*inter alia*) create serious social problems for gamblers and their family members.

110 For completeness, we should also mention that, in *Star City (CA)* and *Burswood Nominees*, this court appeared to have regarded the public policy encapsulated in s 5(2) of the CLA as being solely that of saving judicial resources, *ie*, of preventing "[v]aluable court time and resources that [could] be better used elsewhere … [from being] wasted on the recovery of … unmeritorious claims" (see *Star City (CA)* at [31], which was quoted at [44] of *Burswood Nominees*). Undoubtedly, the enactment of what is now s 5(2) of the CLA (via, initially, the application of the 1848 Indian Act in Singapore and, subsequently, the enactment of s 7(1) of the CLO and its successor provisions) did help to prevent judicial resources from being wasted on unmeritorious claims, but there could not have been many claims in our courts for money allegedly won upon wagers before the 1848 Indian Act became

applicable here, so this particular objective could not have been an important reason for enacting what is now s 5(2) of the CLA.

Public policy based on statute versus public policy at common law

111 Public policy has many faces. In C M V Clarkson & Jonathan Hill, *The Conflict of Laws* (Oxford University Press, 3rd Ed, 2006), the authors noted (at p 487):

> There seem to be two classes of case[s] (which sometimes overlap) in which public policy may be invoked by the court. In the one class the foreign rule is not applied, or the foreign judgment not recognised or enforced, because to do so in the circumstances of the case would offend fundamental English ideas of morality, decency, human liberty or justice. In the other class of case, public policy is invoked because the case falls within the scope of an English rule whose purpose is to protect the public interest.

112 In the above passage, the authors probably had in mind public policy at common law ("common law public policy"). In the case of s 5(2) of the CLA, it may be said to encapsulate a public policy emanating from statute ("statutory public policy"). In any case, s 5(2) is a statutory prohibition against the recovery of gambling debts which was imposed in the public interest. In this regard, it bears emphasis that "statutes can be the source of *fundamental* public policy of general application" [emphasis added] (see "Statute and Public Policy in Private International Law" ([73] *supra*) at 142; see also Jean-Gabriel Castel & Janet Walker, *Canadian Conflict of Laws* (LexisNexis Butterworths, 6th Ed, 2003)). As a matter of principle, a legal or public policy expressed in a statute would be more fundamental than common law public policy as it is axiomatic that statute law takes precedence over the common law.

113 *Ex hypothesi*, the statutory public policy expressed in s 5(2) of the CLA is superior to what may be called the "higher" international public policy at common law, *ie*, the "higher standard of public policy in operation when a forum court is faced with a foreign judgment" (see *Burswood Nominees* ([10] *supra*) at [32]). This is because the higher international public policy is only common law public policy. The position would be different if the court's refusal to enforce a foreign gambling debt, in whatever form or guise that debt takes (including the debt as converted into a foreign judgment), is based on domestic public policy that has no basis in statute; in such circumstances, the court would be entitled to prefer the higher international common law public policy to its domestic common law public policy. But, this is not the case where s 5(2) of the CLA is concerned. In a contest between the higher international public policy at *common law* and *statutory* public policy, the latter *must* prevail.

Does a higher international public policy apply under section 3(2)(f) of the RECJA?

114 Turning to s 3(2)(*f*) of the RECJA, this court held in *Burswood Nominees* (at [41]) that "Liao would have to surmount [a] higher public policy threshold in order to prevail upon [the court] to refuse registration of the [WA] [J]udgment on grounds of public policy". In our view, there is no legal basis for reading this requirement into s 3(2)(*f*). This provision expressly states that a Commonwealth judgment shall not be registered if "*the judgment was in respect of a cause of action which for reasons of public policy* or for some other similar reason *could not have been entertained by the registering court*" [emphasis added]. These words are absolutely clear. The public policy referred to in s 3(2)(*f*) of the RECJA is the public policy of Singapore, whether it be our common law public policy or our statutory public policy. Section 5(2) of the CLA expresses the public policy which precludes the enforcement of any cause of action based on a gambling debt. In *Burswood Nominees*, the cause of action on which the WA Judgment was based was a gambling debt. No doubt, the gambling debt in

question was a valid debt, but s 5(2) of the CLA applies to all gambling debts. Accordingly, the court should have accepted Liao's argument that the WA Judgment could not be registered under s 3(2)(*f*) of the RECJA on the ground that that judgment was based on a cause of action which could not, by virtue of the public policy encapsulated in s 5(2) of the CLA, be maintained in Singapore. In our view, the decision in *Burswood Nominees* is, with respect, unsound and should be reviewed if a similar issue were to come before this court in the future. We might add that, in his commentary on *Burswood Nominees* in "Statute and Public Policy in Private International Law", Prof Yeo Tiong Min was of the view (at 140–146) that the decision was not defensible in the light of the express words of s 3(2)(*f*) of the RECJA.

Our observations on the Section 5(2) CLA Issue

115 We now return to the decision of the Judge in the present case, *viz*, that s 5(2) of the CLA did not apply to bar the Respondent's common law action based on the 2001 California Judgment (*ie*, the Singapore Action). It may be recalled that, in *Burswood Nominees*, this court did not rule on whether s 5(2) of the CLA would have precluded Burswood from bringing an action in Singapore on the WA Judgment (see [67] above). This was because Burswood did not sue on the WA Judgment here, but instead applied to register it under the RECJA. Furthermore, this court also prevented Liao from arguing that the public policy encapsulated in s 5(2) of the CLA was applicable to prevent the court from registering the WA Judgment under the RECJA. *Burswood Nominees* is therefore *not* a direct authority in support of the Judge's decision that "s 5(2) of the CLA did not bar a common law action in Singapore upon a foreign judgment based on a foreign gambling debt" (see the GD at [42]).

116 The Judge's reasons for the aforementioned ruling are set out at [51]–[56] of the GD, and they can be summarised as follows:

(a) Common law public policy should not be distinguished from statutory public policy (*id* at [51]).

(b) Where enforcement of a foreign judgment is concerned (*id* at [52]):

> It should not matter whether the foreign judgment was one where reciprocal arrangements [pursuant to the RECJA or the REFJA] … allowed a simpler process of "enforcement" by way of registration or one where common law action must invariably be taken upon the foreign judgment for the purpose of "enforcement" because no such reciprocal arrangements existed.

(As we noted at [59] above, the REFJA has not been extended to California and, therefore, the 2001 California Judgment could not be enforced by registering it in Singapore.)

(c) On the facts of *Burswood Nominees*, if a common law action on the WA Judgment would have been precluded by s 5(2) of the CLA, then that judgment would not have been registered in view of s 3(2)(*f*) of the RECJA (see the GD at [53]). Since the WA Judgment could be registered under the RECJA, it must be the case that s 5(2) of the CLA would not bar a common law action on that judgment. It followed, by analogy, that s 5(2) of the CLA should not bar a common law action in Singapore on the 2001 California Judgment (*ibid*).

(d) Based on the doctrine of comity, the public policy of Singapore ought not to favour "the evasion of foreign judgments by persons who borrowed money abroad for the purpose of gambling abroad and … lost [the] borrowed money on gambling" (see the GD at [54]).

(e) The law would be "quite extraordinary" (*id* at [55]) if (*ibid*):

> … a gambler would have to face, in Singapore, the consequences of having to repay a judgment debt arising out of his gambling debt just because he happened to gamble in a casino in a country forming part of the Commonwealth[,] but … would simply be able to walk away completely free from those judgment debts if he fortuitously incurred his gambling debts in a casino in a non-Commonwealth [S]tate [to which the REFJA did not apply] …

In the Judge's view, the court should adopt (*ibid*):

> … a view of public policy in relation to enforcement of foreign judgments on gambling debts that would result in a similar, consistent and sensible outcome (a) regardless [of] where the gambling debt was incurred and whether the foreign [judgment was] from the courts of those [S]tates with or without reciprocal enforcement arrangements under either the RECJA or the REFJA; and (b) irrespective of the mode of enforcement of the foreign judgment that would be allowed under Singapore law.

On this basis, the Judge held, apropos the enforcement of foreign judgments in Singapore, that s 5(2) of the CLA should neither bar a common law action in Singapore upon a foreign judgment founded on a gambling debt nor bar the registration of such a foreign judgment under the RECJA or the REFJA (as the case might be).

117 In essence, the Judge was of the view that, if a foreign judgment based on a gambling debt could be registered under either the RECJA or the REFJA on the ground that the restrictions on registration in s 3 of the RECJA or s 4 of the REFJA (as the case might be) did not apply, then that judgment should be enforceable by way of a common law action in Singapore, and s 5(2) of the CLA should not apply to the common law action for the same reason that the restrictions on registration in the RECJA or the REFJA (whichever was the relevant Act) did not apply. This should be so even if, as in the present case, the RECJA or the REFJA (as the case might be) were not extended to the foreign State in question.

118 With respect, we do not agree with proposition (a) of [116] above. Common law public policy has to be distinguished from statutory public policy because statute law has superior legal force compared to the common law. It follows that statutory public policy necessarily takes precedence over common law public policy (in this regard, see generally [112]–[113] above). As for proposition (b) of [116] above, we agree with it only if the foreign judgment in question is otherwise enforceable by a common law action, *ie*, only if, first, that judgment was not procured by fraud; second, the enforcement of that judgment would not contravene Singapore's public policy; and, third, the proceedings in which that judgment was obtained were not contrary to natural justice (see [14] above). We also do not agree with proposition (c) of [116] above because the decision in *Burswood Nominees* was not relevant to the considerations that apply when a judgment creditor sues on a foreign judgment in Singapore instead of applying to have it registered here under either the RECJA or the REFJA (as the case may be). The considerations applicable to a common law action on a foreign judgment are different from those which apply to the registration of Commonwealth and non-Commonwealth foreign judgments. *Burswood Nominees* was decided based on the court's construction of s 3(2)(*f*) of the RECJA – a provision which has nothing to do with a common law action on a foreign judgment. As for propositions (d) and (e) of [116] above, they are not material to the issues before us, and we therefore express no views on them.

119 We stated earlier (at, *inter alia*, [67] above) that this court in *Burswood Nominees* did not decide whether or not s 5(2) of the CLA would have applied to bar a common law action on the WA

Judgment if Burswood had commenced such an action in Singapore. The Judge, however, nonetheless relied on that case as indicating that s 5(2) of the CLA did not apply to preclude a common law action on a foreign judgment which rested on a gambling debt (see proposition (c) of [116] above). As we have just stated in the preceding paragraph, we do not agree with the Judge on this point. We also wish, in this regard, to make two observations as follows.

120 The first is that, if, as is our view, the WA Judgment in *Burswood Nominees* was not registrable under the RECJA (contrary to this court's decision in that case) as its underlying cause of action was contrary to the public policy of Singapore as encapsulated in s 5(2) of the CLA, then it should follow, logically, that the WA Judgment would not have been enforceable either if it had been sued upon here in a common law action – in other words, it would appear that a common law action on a foreign judgment which rests on a gambling debt *cannot* be brought in a Singapore court. However, we do not wish to express a conclusive opinion on this issue as it should (in our view) be determined only after it has been fully canvassed in future proceedings involving foreign judgments based on gambling debts.

121 Our second observation is that since a foreign judgment is merely an implied obligation to pay a judgment debt, the question arises as to whether the court may re-characterise a common law action on a foreign judgment which rests on a gambling debt as a "direct" (so to speak) action to recover a gambling debt. Given what this court said in *Star City (CA)* at [29] and *Burswood Nominees* at [16]–[17], the answer would appear to be "yes", unless there is a higher public policy which militates against such re-characterisation. Upon such re-characterisation (and assuming that it is appropriate to carry out such re-characterisation so as to "forcefully resist … attempts to evade the provisions of the [CLA]" (see *Star City (CA)* at [29])), a common law action on a foreign judgment whose underlying cause of action is a gambling debt would in effect be a "direct" common law action to enforce that gambling debt, and would therefore be barred by s 5(2) of the CLA. However, we again express no definitive opinion on this question for the reason stated at [120] above.

122 In this connection, we should highlight the case of *Ralli v Angullia* ([86] *supra*), where the SSCA stated (*obiter*) that a foreign judgment created a new and independent obligation distinct from the original cause of action, and that the plaintiff who sought to enforce a foreign judgment could be in a better position than if he sued on the original cause of action upon which the foreign judgment rested. *Ralli v Angullia* was a rather unusual case. There, the plaintiff sued the defendant in the High Court of Bengal on certain contracts. The defendant defended the claim, but was unsuccessful. His appeal to the Court of Appeal of Bengal apropos the judgment entered against him ("the Indian judgment") was dismissed. It is important to note that, in the Indian proceedings, the defendant *did not* plead that the contracts in question were wagering contracts and therefore void under s 30 of the Indian Contract Act (which had the same effect as s 7(1) of the CLO (reproduced at [87] above)). The plaintiff then commenced an action on the Indian judgment in Singapore. In the enforcement action in Singapore, the defendant pleaded the defence that the Indian judgment had been obtained in respect of wagering contracts, which contracts were void under s 7(1) of the CLO (as mentioned at [88] above, ss 5(1) and 5(2) of the CLA are collectively the current equivalent of s 7(1) of the CLO).

123 At first instance, Bucknill CJ held that the defendant could not invoke s 7(1) of the CLO in the Singapore action as he should have pleaded in the Indian proceedings that the contracts sued upon were unenforceable under Indian law by virtue of s 30 of the Indian Contract Act; since the defendant had not raised that plea in India, he could not rely on s 7(1) of the CLO to make a similar argument in the enforcement proceedings in Singapore. Bucknill CJ also stated that, since the Indian judgment was valid in India, the Singapore courts could refuse to enforce it only on grounds of public policy; in the absence of such grounds, the doctrine of comity between States obliged the Singapore

courts to enforce the judgment.

124 On appeal, the SSCA affirmed Bucknill CJ's decision that the defendant was estopped from raising the point that the contracts upon which the Indian judgment rested were wagering contracts. All three members of the SSCA were also of the view that a foreign judgment could stand on a better footing than the cause of action upon which it was based (*id* at 76 *per* Woodward J, *id* at 91 *per* Sproule J and *id* at 98 *per* Edmonds J) because a judgment created "a new and independent obligation, distinct from the original cause of action" (*id* at 76 *per* Woodward J). Edmonds J noted that some defects such as fraud or contravention of public policy might be transmitted from the original cause of action to the new cause of action created by the foreign judgment (*id* at 94); *ie*, the defence of public policy might be available in proceedings to enforce a foreign judgment. On the facts of *Ralli v Angullia*, however, Edmonds J was of the view that this defence could not apply as (*id* at 98):

> Wagers … are not only not illegal, but even enforceable … by English Common Law; and subject to Colonial Legislation, the English Common Law, so long as it is not of local application, prevails in [Singapore]. The [CLO] does not make a gaming or wagering contract illegal. Honourable men pay their bets. Some wagers, e.g. insurances, are legally enforceable. The English Courts are now averse to extending the term, Policy of the Law, to cover new matter. If a foreign jurisdiction chooses to enforce wagers, how can it be said that this is against public policy or against public morals? Is there not a moral obligation to pay the debt sufficient to found a legal obligation in a judgment on a foreign wager?

125 It appears from the judgments of the various members of the SSCA in *Ralli v Angullia* that they found that the Indian judgment was valid and enforceable against the defendant in Singapore in that it gave rise to a new cause of action which could be sued upon here, and that there was no public policy in Singapore against allowing such a suit even though the Indian judgment was alleged to rest on wagering contracts. In this regard, we would caution that the SSCA's statements in *Ralli v Angullia* were made in the context of the court's understanding that s 7(1) of the CLO had no extraterritorial effect and that the second limb of this provision (which was the then equivalent of s 5(2) of the CLA) applied *only* to claims for money alleged to be won upon wagers entered into *in Singapore*. In other words, *Ralli v Angullia* was decided at a time when the Singapore courts applied the two limbs of s 7(1) of the CLO as though they were a single provision *with no extraterritorial effect*, which was how the English courts applied the two limbs of s 18 of the 1845 UK Gaming Act prior to the majority decision of the House of Lords in *Hill* ([79] *supra*). As we pointed out earlier (see [79] above), the majority of the law lords in *Hill* overruled all previous decisions, and held that the second limb of s 18 of the 1845 UK Gaming Act (the then English equivalent of s 5(2) of the CLA) applied to all claims for money allegedly won upon wagers, regardless of where the wagers were entered into. In this respect, *Halsbury's Laws of England* vol 8(3) (LexisNexis UK, 4th Ed Reissue, 2003) states at para 25 as follows:

> In so far as the [1845 UK Gaming Act] enacts that no suit is to be brought or maintained to recover any sum of money or valuable thing alleged to have been won upon any wager, it is a statute affecting procedure, and therefore *no action lies in England for money won upon a wager in a foreign country, even though the wager is lawful according to its proper law* [citing *Moulis v Owen* [1907] 1 KB 746 at 753 and *Hill* at 579]. [emphasis added]

Similarly, *Dicey, Morris and Collins* ([13] *supra*) states (at vol 2, para 33-448) that the second limb of s 18 of the 1845 UK Gaming Act:

> … was construed as a procedural rule, part of the *lex fori*, which relieved 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 [limb of s 18 of the 1845 UK Gaming Act]" [citing *Hill* at 579]. The result was that while a wagering contract [might] have been valid by its governing law, it was unenforceable in an English court.

126 In short, the issues that remain undecided in relation to s 5(2) of the CLA are:

(a) whether a common law action on a foreign judgment based on a gambling debt may be re-characterised as a "direct" claim for a gambling debt (in this regard, it appears to us that such re-characterisation is consistent with the conflict of laws principle that a foreign judgment imposes on the judgment debtor an implied obligation to pay a simple debt); and

(b) whether the public policy encapsulated in s 5(2) of the CLA prevents a judgment creditor from bringing in Singapore a common law action on a foreign judgment which rests on a gambling debt.

Summary of our decision

127 In summary, our finding in this appeal is that the 2001 California Judgment was not enforceable by way of a common law action as it was not a foreign money judgment as defined at [14] above. On this basis, we allow the present appeal. As for the Limitation Issue and the Section 5(2) CLA Issue, although they are not live issues given our ruling that the 2001 California Judgment could not be enforced by way of a common law action in Singapore, we proffer the following observations:

(a) the six-year limitation period under s 6(1)(*a*) of the LA applies to common law actions on foreign judgments; and

(b) it appears that (although, as stated at [120]–[121] above, we do not wish to express any conclusive opinion on this particular point) s 5(2) of the CLA would bar a common law action on a foreign judgment (whether emanating from a Commonwealth country or a non-Commonwealth foreign country) whose underlying cause of action is a gambling debt.

Conclusion

128 In view of our decision that the 2001 California Judgment was not a foreign money judgment and therefore could not be enforced in Singapore by way of a common law action, we allow this appeal and set aside the judgment of the Judge. We restore the decision of the AR to strike out the Singapore Action. The Respondent will pay the Appellant's costs of the present appeal as well as of the proceedings before the Judge and the AR. The usual consequential orders will follow.

[note: 1] See the certified transcript of the notes of evidence of the hearing before the AR on 3 March 2008 ("the notes of evidence of the 3 March 2008 hearing") at p 3 (at vol 2, p 164 of the Appellant's Core Bundle ("ACB")).

[note: 2] See pp 3–4 of the notes of evidence of the 3 March 2008 hearing (at ACB vol 2, pp 164–165).

[note: 3] See p 5 of the notes of evidence of the 3 March 2008 hearing (at ACB vol 2, p 166).

[note: 4] See para 14 of Stearman's affidavit filed on 20 May 2008 (at ACB vol 2, p 170).

[note: 5] *Ibid*.

[note: 6] See para 15 of Stearman's affidavit filed on 20 May 2008 (at ACB vol 2, p 170).

[note: 7] See para 17 of Stearman's affidavit filed on 20 May 2008 (at ACB vol 2, p 171).

[note: 8] *Ibid*.

[note: 9] See para 21 of Stearman's affidavit filed on 20 May 2008 (at ACB vol 2, p 171).

[note: 10] See para 22 of Stearman's affidavit filed on 20 May 2008 (at ACB vol 2, p 172).

[note: 11] See ACB vol 2, p 70.

[note: 12] *Id* at pp 187–188.

[note: 13] *Id* at pp 194–195.

[note: 14] *Id* at p 195.

[note: 15] *Ibid*.

[note: 16] See para 13 of the Executive Summary of the 2007 NCPG Report.

[note: 17] *Ibid*.

[note: 18] See the 2007 NCPG Report at para 2.3.

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