IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 173

Suit No 152 of 2016 and
Summons No 1401 of 2018

Between

Resorts World at Sentosa Pte Ltd

… *Plaintiff*

And

Lee Fook Kheun

… *Defendant*

JUDGMENT

[Betting, gaming and lotteries] — [Loans] — [Casino Control Act]
[Contract] — [Formation] — [Capacity of parties] — [Incapacity] — [Intoxication]
[Contract] — [Remedies] — [Rescission]

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v
Lee Fook Kheun

[2018] SGHC 173

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Valerie Thean J
3–11 April 2018; 9, 30 May 2018, 29 June 2018, 2 July 2018

31 July 2018 Judgment reserved.

Valerie Thean J:

Introduction

1 The plaintiff, Resorts World at Sentosa Pte Ltd ("RWS"), is a licensed casino operator.[1] The defendant, Mr Lee Fook Kheun ("Mr Lee"), is a patron to whom RWS extended a credit facility of $5 million on 20 August 2010 ("the Credit Facility"), which subsequently was increased by another $5 million on 22 August 2010. The Credit Facility was fully drawn down. Mr Lee has made partial repayment, and $5,930,595 remains outstanding. RWS claims this amount, together with the interest and costs provided under the agreements. Mr Lee contests this, and counterclaims for the sum he previously paid RWS. For reasons that follow, judgment is ordered for RWS and Mr Lee's counterclaim is dismissed.

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[1] Statement of claim (amendment no. 2) at para 1.

Background

2 Mr Lee is a 67-year-old Malaysian who was a director and shareholder of various construction companies and is at present largely retired. Since the early 1990s, he has been a close friend and business associate of Mr Lim Kim Chai ("Mr Lim"). Mr Lim was and is in the gaming and gambling industry, and operates junkets to casinos with Mr Low Thiam Herr ("Mr Low"). Mr Lee also became acquainted with Mr Low through Mr Lim. All three men live in Kuala Lumpur. From 2007, the three men travelled together for business and leisure. From time to time, Mr Lee visited casinos as part of a larger group with Mr Lim and Mr Low.

3 Mr Lee's first visit to RWS was on 7 July 2010. RWS was newly opened at the time, and he was interested to explore the possibility of opening a Chinese restaurant in RWS that would specialise in seafood dishes and turtle soup.[2] Mr Lee remembered receiving VIP treatment as part of Mr Lim's entourage, and enjoying alcohol in the VIP room.[3] During the visit, Mr Lee applied to be a member of RWS, and completed a Letter of Authorisation, in which he authorised representatives of RWS to assist him whenever he gamed at its casino ("the Casino"). Mr Lee also obtained a "Platinum" level membership, which enabled him to game in the Casino's high limit gaming area.[4] Mr Lee was further enrolled in the Casino Rolling Programme as a premium member, and enjoyed access to the Casino's premium lounge.[5]

4 On 20 August 2010, Mr Lee visited the Casino again with Mr Lim and

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2 Mr Lee's AEIC dated 4 April 2018 at paras 12–14.

3 Mr Lee's AEIC dated 4 April 2018 at paras 17–18.

4 Ms Tan Yong Yong's ("Ms Tan") AEIC dated 9 November 2017 at paras 10–11; Agreed bundle of documents ("AB") at pp 182–184.

5 Ms Tan's AEIC dated 9 November 2017 at para 15; AB at p 37.

Mr Low.[6] They were welcomed by Tan Choon Seng ("Mr Tan"), who was assigned by RWS to serve as their relationship manager.[7] By way of a Credit or Cheque Cashing Facility Request Form signed by Mr Lee ("the Request Form"),[8] he obtained a facility of $5 million from RWS. On the same day, RWS provided Mr Lee $5 million worth of gambling chips, as evidenced by a credit marker signed by Mr Lee ("the First Credit Marker").[9] Both the Request Form and the First Credit Marker are dated 20 August 2010.

5 Two days later, on 22 August 2010, Mr Lee again accompanied the same group of friends to the Casino. Pursuant to a Credit Line Amendment Request Form signed by Mr Lee, he obtained an increase in his credit facility with RWS to $10 million ("the Amendment Form").[10] RWS then provided him a further $5 million in chips, as evidenced by a second credit marker ("the Second Credit Marker"), which was signed by Mr Lee.[11] Both the Amendment Form and the Second Credit Marker are dated 22 August 2010.

6 The $10 million credit facility was fully drawn down. Under the terms of the Request Form and the Amendment Form ("the Credit Agreements"), Mr Lee was to make repayment within seven days from the date of the draw down. He did not do so. Several months later, RWS contacted Mr Lee, asking him to repay the sum of $10 million. According to Mr Lee, he insisted that he did not draw down on the Credit Facility or gamble at the Casino, and requested for CCTV footage of him gambling, which RWS did not provide.[12] Despite this, Mr

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6 Mr Lee's AEIC dated 4 April 2018 at paras 7, 10 and 23.

7 Defence (amendment no 1) at para 4.

8 AB at pp 1–2

9 AB at p 5.

10 AB at pp 3–4.

11 Ms Tan's AEIC dated 9 November 2017 at p 74.

Lee began to make repayments to RWS in instalments.[13]

7 Subsequently, Mr Lee was contacted by Dato' Sri Michael Joseph ("Dato' Sri Joseph"), who was at that time a Senior Vice President of RWS.[14] In or around early 2015, Dato' Sri Joseph asked to meet Mr Lee, and during that meeting, pressed Mr Lee for repayment.

8 Mr Lee then prepared 25 post-dated cheques of RM500,000.00 in favour of RWS,[15] as well as a handwritten cover letter dated 8 January 2015 enclosing those cheques ("the Handwritten Letter").[16] The letter was headed "without prejudice" and read as follows:

> Re: Credit Facility
>
> With reference to the above matter, I enclose herewith 24 cheques of RM500,000.00 each dated 25th day of each month commencing from January 2015 as settlement for the credit facility subject to the following conditions:-
>
> (a) that I may request for deferment of about 10 days from 25th day of each month in the event I do not have sufficient fund in the account for clearance of those cheques,
>
> (b) you shall return the cheque(s) to me in the event I deposited money into your account in lieu of the payment by cheque,
>
> (c) I shall be entitled to some rebate at the end of settlement of the credit facility.

The letter was signed off by Mr Lee and acknowledged by Dato' Sri Joseph with a signature dated 9 January 2015.

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12 Mr Lee's AEIC dated 4 April 2018 at paras 47–51.

13 Ms Tan's AEIC dated 9 November 2017 at para 34.

14 Mr Lee's AEIC dated 4 April 2018 at paras 57–58.

15 Mr Lee's AEIC dated 4 April 2018 at paras 64–69; AB pp 161–169.

16 AB at pp 159–160.

9 On or around the same date, Mr Lee signed a "settlement agreement" dated 8 January 2018 prepared by RWS, acknowledging that he owed $10 million to RWS under the Credit Facility ("the Settlement Agreement").[17] The salient parts of the Settlement Agreement reads in the following terms:

> SETTLEMENT OF OUTSTANDNG UNDER THE CREDIT FACILITY FOR SGD 10,000,000.00 (the "CREDIT FACILITIES")
>
> *I acknowledge that Resorts World at Sentosa Pte. Ltd. ("RWS") had, at my request, extended a total sum of SGD 10,000,000.00 to myself under the Credit Facilities* between the period of 20 Aug 2010 to 22 Aug 2010, and the outstanding currently due and owing by me to RWS under the Credit Facility is SGD 6,878,146.00 (the "Outstanding Debt")
>
> In consideration of RWS granting to me the indulgence of time to settle the Outstanding Debt, I agree to repay the Outstanding Debt according to the following Payment Schedule and on the terms and conditions set out in this letter (the "Settlement Agreement"):
>
> …
>
> Time shall be of the essence. I agree that, without prejudice to any other rights that RWS may have, in the event of any breach or default of any obligations pursuant to this Settlement Agreement, all balance outstanding amounts shall automatically become due and payable without notice.
>
> [emphasis added]

10 Mr Lee does not dispute that he signed the Settlement Agreement, but contends that he did so because he feared the embarrassment of a lawsuit. While Dato' Sri Joseph thought that the Settlement Agreement was signed on 8 January 2015, Mr Lee's case is that it was signed on 9 January 2015.

11 Thereafter, Mr Lee continued to make payments to RWS by depositing cash into RWS's account. His last payment was on 21 August 2015.

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17 AB at pp 155–156.

Parties' cases

12 RWS's claim is for sums owing under the Credit Agreements, interest and costs. At the time of trial, after partial payment by Mr Lee of $4,067,287 made between 23 August 2010 and 21 August 2015, and the deduction of $2,118 "Genting points" earned by Mr Lee during program play, $5,930,595 of the original $10 million drawn down under the Credit Facility remained outstanding.[18]

13 Mr Lee does not dispute the calculation of the amount claimed as outstanding. His defence comprises primarily two arguments. First, he submits that the Credit Agreements are voidable, because he was intoxicated when he signed them, and did not understand the nature and effect of the transaction he was entering into.[19] He contends that he has successfully rescinded the Credit Agreements.

14 His second line of defence is that the Credit Agreements are null, void and unenforceable under the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA"). He argues the exemption provided by s 40(*c*) of the Casino Control Act (Cap 33A, 2007 Rev Ed) ("CCA") to s 5 of the CLA is inapplicable because RWS failed to comply with regulations 6(a) and 12 of the Casino Control (Credit) Regulations 2010 (S 53/2010) ("the Regulations"), issued under s 108 of the CCA. Regulation 6 requires a request for credit, which Mr Lee submits that he did not make. Rather, it was Mr Tan, and the Casino's staff, who had persistently offered him credit, despite his repeated rebuffs.[20] Regulation 12 requires the implementation of a credit policy. RWS's credit policy is set out in its "Casino

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18 RWS's closing submissions dated 30 May 2018 at para 16.

19 Mr Lee's closing submissions dated 9 May 2018 at para 20.

20 Mr Lee's closing submissions dated 9 May 2018 at paras 48–51.

Credit Policy for Credit & Cheque Cashing Facility", dated 3 March 2010 ("the Credit Policy"). Paragraph 2.A.1.1 of the Credit Policy states that the credit application must be supported by documents, including a "credit application form". Mr Lee's case is that the Credit Policy was breached because the Credit Agreements were "not legitimately completed", as he was intoxicated, did not request for credit, and a RWS representative had recommended him for credit despite having no basis to do so.[21] In the circumstances, since the Regulations were not complied with, ss 40(*c*) and 108 of the CCA do not apply, and the Credit Agreements are void by virtue of s 5 of the CLA.

15 Arising from these contentions, Mr Lee filed a counterclaim, asking for the return of sums paid to RWS.

16 RWS's response is that Mr Lee failed to establish, on a balance of probabilities, that he was intoxicated when he signed the Credit Agreements. In particular, the inconsistencies in his evidence demonstrate his lack of credibility,[22] and he did not adduce any evidence to corroborate his account. Furthermore, he did not adduce any objective evidence to show that Mr Tan knew or ought to have known of his state of intoxication.[23] In addition, Mr Lee failed to plead rescission as a remedy, and in any event, the requirements of rescission were not made out.[24] Indeed, Mr Lee had on many occasions affirmed his debt to RWS, by, *inter alia*, making partial payments, entering into the Settlement Agreement, and handing over 25 post-dated cheques made out to RWS.[25]

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21 Mr Lee's closing submissions dated 9 May 2018 at paras 52–59.

22 RWS's closing submissions dated 30 May 2018 at paras 137–140.

23 RWS's closing submissions dated 30 May 2018 at paras 210–216.

24 RWS's closing submission dated 30 May 2018 at paras 217–237.

25 RWS's closing submission dated 30 May 2018 at paras 185–202.

17 Regarding regulations 6 and 12, it is RWS's case that it has complied with the Regulations. First, the fact that Mr Lee had signed the Credit Agreements showed that he did request for credit. In any event, Mr Lee was aware that the Credit Agreements were for credit when he signed them.[26] Second, RWS complied with its Credit Policy, as it had carried out various searches on Mr Lee when he first applied for credit on 20 August 2010.[27] RWS further relies on the principle that a breach of a statutory duty does not, by itself, give rise to any private law cause of action.[28]

Application for amendment of Defence and Counterclaim

18 I should mention that, less than two weeks prior to trial, Mr Lee filed an application to amend his Defence and Counterclaim. I heard this application on the first day of trial. RWS agreed to some of the amendments, but objected to the ones which introduced a new defence of unconscionability. After hearing parties, I disallowed the contested amendments because the new defence was clearly unsustainable and had no prospect of success. Mr Lee relied on *BOK v BOL and another* [2017] SGHC 316 ("*BOK v BOL*") in requesting the amendments. In that case, I held that parties who attempt to invoke the doctrine of unconscionability must satisfy two criteria. First, there must be weakness on one side. Second, there must be exploitation, extortion, or advantage taken of that weakness. I also held, at [119], that *a transaction at an undervalue would be a necessary component of this requirement*. Thus, for example, *BOK v BOL* concerned a trust instrument which was a voluntary disposition, from which the plaintiff received no financial return. In this case, the Credit Agreements are commercial transactions and were not procured at an undervalue. Mr Lee

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26 RWS's closing submission dated 30 May 2018 at paras 171–174.

27 RWS's closing submission dated 30 May 2018 at paras 175–182

28 RWS's closing submissions dated 30 May 2018 at para 183.

obtained $10 million worth of chips, precisely the amount he contracted for. This head of claim was clearly unsustainable on the facts pleaded and the amendments, if not rejected, would have obscured, rather than allowed, the real issues in the proceedings to be determined.

The issues

19 The following issues, therefore, arise for consideration:

(a) Mr Lee's contention that he has rescinded the Credit Agreements on the basis of his intoxication at the time the agreements were signed involves two questions as follows:

(i) As a factual issue, was Mr Lee intoxicated when he signed the Credit Agreements?

(ii) If so, what is the effect of that intoxication?

(b) Mr Lee's second contention, that the Credit Agreements are void under the CLA because of non-compliance of regulations 6 and 12, involves the following two queries:

(i) As a factual issue, have regulations 6 and 12 been breached?

(ii) If so, what is the effect of such non-compliance?

20 In gist, I am of the view that Mr Lee has not proved on the balance of probabilities that he was so intoxicated that he failed to understand the nature and effect of the Credit Agreements. Even if this were not so, he has not rescinded the agreements; indeed his delay and conduct have affirmed them. His arguments under the CLA are also not persuasive because regulations 6 and

12 have been complied with. Mr Lee requested for the Credit Facility by signing the Credit Agreements, and RWS conducted the necessary background checks when granting credit to Mr Lee. I elaborate below.

Intoxication

21 Intoxication results in impairment of mental capacity, and for that reason has been likened in the law to mental incapacity: see *Molton v Camroux* (1849) 4 Exch 17,19; 154 ER 1107,1108. A person seeking rescission must show that, first, when he entered into the transaction he was so drunk that he was unable to understand the general nature and effect of the transaction. This level of understanding was explained by Hallett J in *Manches v Trimborn* (1946) 115 LJKB 305, 307 as "such a degree of incapacity as would interfere with the capacity of the defendant to understand substantially the nature and effect of the transaction into which she was entering." Second, the counterparty to the transaction must have known of his infirmity. In *York Glass Co Ltd v Jubb* (1925) 42 TLR 1 (CA) 2, the claim failed as the counterparty "did not know and had no reasons to know that [the complainant] was out of his mind at the time."

Factual premise for defence of intoxication

22 Mr Lee must first prove that he was so drunk that he was unable to understand the nature or effect of the transaction. His contention is that while he was drunk on 20 August 2010, Mr Tan persistently pressured him to accept a credit facility of $5 million. He eventually relented, he says, because his intoxication "left [him] quite open to being influenced", and he did not wish to embarrass or offend his friends who were with him, even though he did not intend to gamble.[29] As a result of his intoxication, Mr Lee was unaware that the

plaintiff was presenting for his signature documents that would render him liable to RWS under the Credit Agreements. In particular, when he signed the First Credit Marker on 20 August, he did not know that he was drawing down on the Credit Facility. Furthermore, Mr Lee has no memory of signing the Amendment Form and the Second Credit Marker on 22 August 2010. The legal effect of those documents were not explained to him. He only understood what Mr Tan told him, which is that he would not pay anything if he did not gamble. He was therefore surprised when $10 million worth of chips were provided to him on 20 and 22 August 2010. Thinking that there must have been a mistake, he left all those chips on the gambling table.[30] Moreover, Mr Tan must have known that he was drunk at the material times, because Mr Tan had accompanied him in the Casino, was present while he was drinking, and had prolonged interactions with him thereafter.[31]

Mr Lee's testimony

23 The starting point for the analysis as to whether Mr Lee was so drunk that he was unable to understand the nature and effect of the transaction must be his testimony. I begin with an observation of a concession within his own testimony. In his affidavit of evidence-in-chief ("AEIC"), he deposed that he remembered feeling surprised when he was offered a credit facility of $5 million, which "was not a sum [he] could afford, and it was not a sum [he] would be willing to use to gamble and potentially lose".[32] This showed that he was aware of *the sum* being requested. Mr Lee also admitted at trial that he knew that the Request Form related to the granting of a credit facility when he signed

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29 Mr Lee's AEIC dated 4 April 2018 at paras 26–31.

30 Mr Lee's closing submissions dated 9 May 2018 at para 21.

31 Mr Lee's closing submissions dated 9 May 2018 at para 30.

32 Mr Lee's AEIC dated 8 April 2018 at para 29.

it, because Mr Tan had told him so.[33] On his own account, therefore he was able to understand the *nature* of the Request Form.

24 Further, it must be borne in mind that there was not one, but two, agreements which Mr Lee claimed he was too intoxicated to understand, on two separate occasions on two separate days, 20 and 22 August 2010. He did not attempt to explain plausibly why, after 20 August 2010, he did not raise any alarm, but went on to repeat his mistake, signing for further credit on 22 August 2010.

25 His narrative was not strengthened by his performance on the stand, where he contradicted himself in three material areas, which I deal with here in turn.

26 First, Mr Lee's evidence on the alcohol he consumed, which is fundamental to his contention of intoxication, was inconsistent. In his further and better particulars dated 21 October 2016 at paragraph 3(f), he claimed that he could not recall the type of alcohol he was drinking.[34] However, at paragraph 25 of his AEIC dated 4 April 2018, he deposed that he "alternated between drinking brandy, red wine and whisky" on the night of 20 August 2010. Yet, at trial, in response to the question on whether he could remember what he was drinking on 20 August 2010, Mr Lee's reply was: "Now I cannot remember".[35]

27 Second, while it is crucial for him to explain how he came to sign the relevant documents on 20 and 22 August 2010, he vacillated on the circumstances under which Mr Tan procured his signature on the Request Form

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33 NE, 5 April 2018, pp 53–54.

34 Bundle of pleadings, pp 38–39.

35 NE, 5 April 2018, pp 52–53.

on 20 August. In his original Defence and Counterclaim, Mr Lee stated at paragraph 4(c)(iv) that Tan filled in the Credit Agreements and asked him to sign it. In his amended Defence and Counterclaim, the references to the Credit Agreement were deleted, and it is only stated at paragraphs 4(c)(iv)–(vii) that Tan procured Mr Lee to sign various documents and forms. Under cross-examination, Mr Lee admitted that he knew the documents he signed were for a credit facility of $5 million: see [23] above.

28 Again for the Amendment Form of 22 August, he first averred Mr Tan procured his signature when he was drunk. Yet, in his first AEIC, he stated at paragraph 42 he "did not sign any documents on 22 August 2010". However, in his Amended Defence, he deleted all assertions that Tan had approached him, and deleted all references to him signing the Amendment Form, contending at paragraphs 4(d)(ii)–(iii) and 4(d)(v)–(vi) that he had no recollection as to when he signed the form. At trial, Mr Lee admitted that he signed the Amendment Form on 22 August.[36]

29 The third area relates to the payment terms which are reflected in the Settlement Agreement and Handwritten Letter. Mr Lee initially stated at paragraph 10(a) of his Defence and Counterclaim he first discussed payment terms with Dato' Sri Joseph over the phone in or around early January 2015. In his AEIC, however, he contended, at paragraphs 64 and 69, that Dato' Sri Joseph had called and asked him to meet, and it was only at the meeting that the payment terms were discussed. When cross-examined on this inconsistency at trial, Mr Lee contended his Amended Defence was wrong, and it was only when the two men met in Kuala Lumpur were the terms discussed.[37] This new

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36 NE, 5 April 2018, p 76.

37 NE, 5 April 2018, p 72.

contention bolstered his ancillary contention that he had not been given any opportunity to seek legal advice on the Settlement Agreement. I deal with this contention below, in the context of his subsequent conduct.

30 Mr Lee's credibility was not assisted by his insistence that he did not gamble, on 7 July, 20 August or 22 August 2018. RWS introduced evidence that he did. For 7 July 2010, a Player Rating Report showed that between 3.31pm and 5.12pm, he made bets averaging $300,000, and won $130,000 cumulatively.[38] A Deposit Transaction File Listing Form further shows that Mr Lee exchanged $100,000 worth of "cash chip[s]" for the same value of "premium non-negotiable chip[s]" at 3.27pm.[39] For 22 August 2010, a Player Rating Report reflected Mr Lee gaming on 22 August 2010 between 3.25pm to 5.15pm, making average bets of $100,000 to $150,000, and losing $1.032 million cumulatively.[40] While, Ms Tan Yong Yong ("Ms Tan"), Vice-President, Casino Accounting Department explained that the Player Rating Report is "not comprehensive", it does show that Mr Lee gambled at RWS on 7 July and 22 August 2010. In response, Mr Lee points out in his closing submissions that there is no record of him gambling on 20 August 2010, and that the Player Rating Report dated 22 August 2010 only shows that he gambled $1.032 million, not $10 million.[41] This response is not apposite, because the evidence was adduced on the premise that it was not comprehensive. The extent to which he had gambled personally on his own credit line is not relevant to any defence to his drawing down on his Credit Facility. The issue was, rather, one of his credibility. The evidence was adduced to contradict his protestations that he did

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38 Ms Tan's AEIC dated 9 November 2017 at para 14; AB at p 37.

39 Exhibit P4.

40 Ms Tan's AEIC dated 9 November 2017 at para 32; AB at p 37.

41 Mr Lee's closing submissions dated 9 May 2018 at para 23.

not gamble at all on any occasion on which he visited RWS.

Mr Lee's subsequent conduct

31 Subsequent conduct is crucial in this case because the defence raised is that of temporary impairment caused by drunkenness. What a person who is affected by such a condition does *once he recovers* from this temporary impairment is therefore of great significance. I find that the course of Mr Lee's subsequent conduct contradicts his contention that he had been too drunk to understand what he signed on 20 and 22 August 2010, for four reasons.

32 First, as an experienced businessman, his omission to seek legal advice immediately or in any timely manner after 22 August 2010 was at odds with a man who had been taken advantage of. At trial, Mr Lee explained that he did not want his company's lawyers to find out about the his dispute with RWS.[42] This explanation is inadequate, however, because he could have approached any lawyer who did not work for his company. He further claimed that if his time at a casino became public knowledge, his company's suppliers would stop supplying it, and the company's "bank facility [would] be jeopardised".[43] This explanation is not cogent either, because he could simply seek legal advice on a private basis. Client confidentiality would attach to such communications, and he would be in control of whether any information regarding this case was made public.

33 Second, Mr Lee made repayments to RWS from 23 August 2010 to 21 August 2015, on no less than 46 occasions, amounting to $4,067,287.00.[44] He

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42 Transcript, 5 April 2018, p 48.

43 Transcript, 5 April 2018, p 83.

44 Defence and counterclaim (amendment no 1) at para 15.

contended at trial that he was unaware of the two redemptions made on 23 August 2010 because he was still in a drunken stupor when the group left RWS that same day.[45] The payments continued, however, well past any period of stupor, and long after he returned to Kuala Lumpur, with regularity and consistency. I find it difficult to believe that Mr Lee would pay large sums with such regularity to RWS if he had indeed believed from the outset that he was not liable under the Credit Agreements. Mr Lee explained that he made these payments for the three reasons: he did not want to make it difficult for Mr Lim or affect his relationship and reputation with RWS or other parties in the gambling industry; he did not want his reputation as businessman to be affected; and he did not want his family to worry.[46] His concerns to avoid harming his business reputation and to avoid causing worry to his family do not gel with him eventually deciding to contest the validity of the Credit Agreements, which would (and did) expose himself to a public lawsuit. His primary explanation, his concern for Mr Lim, is also not credible. Under cross-examination, Mr Lee was not able to explain how a potential claim by RWS against him would "make it difficult for Mr Lim", given that Mr Lim did not guarantee his debt. Certainly Mr Lim saw no difficulty. Mr Lee's own evidence on cross-examination was that Mr Lim told Mr Lee not to pay RWS when he mentioned the matter to Mr Lee about one year after the debt arose. Mr Lim's advice, he testified, was "[d]on't pay". [47] Later, in cross-examination, when queried again about his concern for Mr Lim, he was unable to explain why this concern was sufficient for him to have paid over 10 million ringgit:

> Q Is this Mr Lim's problem?

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45 Transcript, 5 April 2018, p.34.

46 Mr Lee's AEIC dated 4 April 2018 at para 53.

47 NE, 5 April 2018, p 36.

> A I can say – I can say that it can in a way affecting [sic] his reputation.
>
> Q So for that, you ended up paying 4-over million dollars, Sing dollars?
>
> A Yes.
>
> Q 10 million Ringgit?
>
> A Hoping to find a way to solve the [sic] things.

34 Third, Mr Lee then specifically conceded liability to pay RWS in the Handwritten Letter (*supra* [7]). It is clear that he gave attention to the document because he included within it several detailed conditions relating to payment. And, in contrast to his position on the Settlement Agreement, Mr Lee did not allege that he had produced the Handwritten Letter under duress. Indeed, this letter was drafted in the comfort of his own office with the help of an engineer employed by him.[48] While he emphasised that the Handwritten Letter was headed "without prejudice", it was in effect a concession of liability with a request for time to pay. RWS accepted his offer and allowed him time to pay as requested.

35 Fourth, Mr Lee also signed the Settlement Agreement, where he admitted to his liability under the Credit Facility. Mr Lee's explanation for this is premised on the following:

(a) Dato' Sri Joseph misled him as to the contents of the Settlement Agreement;

(b) Dato' Sri Joseph threatened that RWS would sue Mr Lee if Mr Lee did not sign the Settlement Agreement;

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[48] Mr Lee's AEIC dated 4 April 2018 at para 70.

(c) Dato' Sri Joseph refused to allow Mr Lee time to obtain legal advice in respect of the Settlement Agreement before signing it;[49]

(d) Dato' Sri Joseph's claim that if Mr Lee refused to satisfy his debt to RWS, RWS would fire Dato' Sri Joseph.[50]

36 None of these contentions are persuasive. Dato' Sri Joseph's loss of employment would not be significant to him because they were not close. Regarding the threat of legal action, it follows as a matter of logic that a creditor who is owed money would threaten to sue. A creditor's determination to take action as entitled is therefore not illegitimate pressure as Mr Lee suggests, and does not explain why Mr Lee would take on a liability that he does not believe he owes. Lastly, if he had wanted legal advice, he could also have taken such advice after 22 August 2010. Mr Lee was aware that he owed a debt to RWS and Dato' Sri Joseph asked to meet him regarding its settlement. There was nothing so new in the documents that was a surprise that he could not anticipate in the run up to 8 January 2015 such that he would have been unable to obtain legal advice on the matter.

37 I should mention that Mr Lee initially attempted to contend, on the same facts, that he signed the Settlement Agreement under economic duress. It is settled law that to establish economic duress, a plaintiff must show pressure amounting to compulsion of the will of the victim, and that such pressure exerted was illegitimate: Andrew Phang Boon Leong (gen ed), *The Law of Contract in Singapore* (Academy Publishing, 2012) ("*The Law of Contract in Singapore*") at para 12.008. It is also settled law that a threat to enforce one's legal rights do not amount to duress, where the threat was made bona fide, and

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49 Mr Lee's AEIC dated 4 April 2018 at paras 64–74.

50 Mr Lee's AEIC dated 4 April 2018 at para 68.

was not manifestly frivolous or vexatious: *Lee Kuan Yew v Chee Soon Juan* [2003] 3 SLR(R) 8, at [42]. On the first day of trial, counsel for Mr Lee dropped this defence on the excuse that this was in response to a clarification by RWS that it was not relying on the Settlement Agreement to establish Mr Lee's liability to RWS.[51] In his closing submissions, counsel even went so far as to reserve his arguments on the same. In fact, it was clear by the point at which Mr Lee filed his AEIC that the defence of economic duress was clearly unsustainable, even on Mr Lee's version of the facts. Notwithstanding, the fact remained that it was incumbent on Mr Lee to explain his contradictory behaviour in signing the Settlement Agreement in the light of his argument that the Credit Agreements were voidable. This he wholly failed to do.

38 On a related note, Mr Lee made 12 more payments after signing the Handwritten Letter and Settlement Agreement. These payments made in 2015 totalled $947,551.

Other evidence adduced by Mr Lee

39 While Mr Lee bore the burden of proving that the defence of intoxication has been made out, his only witness was Yong Yoke Keong ("Mr Yong"), a personal assistant to Mr Lim and Mr Low.[52] Mr Yong recalled that "Mr Lee had been drinking, and that he smelt strong of alcohol" whilst he was in the VIP room" during their trip to RWS in August 2010.[53] Mr Yong did not, however, specify in his AEIC or his oral testimony,[54] whether Mr Lee was drinking on 20 and/or 22 August, the dates when Mr Lee signed the Credit Agreements.

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51 NE, 3 April 2018, pp 10–11.

52 Mr Yong's AEIC dated 29 November 201 7 at para 5.

53 Mr Yong's AEIC dated 29 November 2017 at paras 9–10.

54 NE, 11 April 2018, pp 2–14.

Furthermore, even if Mr Yong's observations relate to those dates, the fact that Mr Lee had been drinking is insufficient. The law requires that Mr Lee must have been so drunk that he was unable to understand the nature of the transaction. Mr Yong, however, did not detail the extent of Mr Lee's intoxication. His evidence therefore did not assist Mr Lee.

40 Mr Lee also did not call Mr Lim or Mr Low as witnesses to corroborate his account, even though they were present with him at the Casino.[55] Mr Lee explained that he was afraid to do so because that would affect their reputation as junket operators, which he explained are individuals who arrange credit for casino patrons in exchange for a portion of the patrons' turnover.[56] He was, notwithstanding, still on good terms with them.[57] This explanation was rather unconvincing, and their absence did nothing to help his case.

Was RWS aware of Mr Lee's intoxication?

41 As mentioned above at [21], the defence of intoxication carries two requirements: aside from proving the extent of his own intoxication, Mr Lee also bore the burden of proving that RWS was aware that he was intoxicated to that extent. While he had indicated in pre-trial correspondence that he would call Mr Tan Choon Seng as a witness,[58] he did not do so. At trial, he adduced no evidence on this requirement save for his own testimony. I have said above that I found him an unreliable witness. His assertion in his closing submissions was that Mr Tan ought to have known of the extent of his intoxication on account of their interaction.[59] This first required an assumption that he was, as a matter of

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55 NE, 5 April 2018, p 29.

56 NE, 5 April 2018, pp 16, 17 and 30.

57 NE, 5 April 2018, p 29.

58 Exhibit P5.

fact, so intoxicated that it ought to have been plain to anyone who interacted with him that he did not understand what he was signing. I have, on the other hand, found that he was not so intoxicated that he was unable to understand the nature and effect of the documents he signed. That being the case, his submission that his condition was obvious to all has no factual premise.

Conclusion on whether intoxication made out on the facts

42 The weight of the evidence, accordingly, showed that Mr Lee was not intoxicated to such an extent that he failed to understand the nature or effect of the Credit Agreements. Nor was RWS aware of any impairment. Mr Lee's case was simply not borne out by his oral testimony, the objective evidence, and his conduct after the agreements were signed.

What is the effect of intoxication on the Credit Agreements?

43 It is common ground that rescission is available as a remedy where a contract is rendered voidable by a party's intoxication. RWS submits, first, that Mr Lee is precluded from seeking rescission because he had failed to plead it adequately. RWS's second assertion is that, on the facts, Mr Lee has not rescinded the contract but rather, has affirmed it.

Has Mr Lee pleaded rescission?

44 Pleadings serve to delineate the parameters of the dispute and inform the opposing party of the case it has to meet: *PT Prima International Development v Kempinski Hotels SA and other appeals* [2012] 4 SLR 98 at [35]). In *SIC College of Business and Technology Pte Ltd v Yeo Poh Siah and others* [2016] 2 SLR 118, at [46], the Court of Appeal held that a court should not adopt an

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59 Mr Lee's Closing Submissions dated 9 May 2018 at para 30,.

overly formalistic and inflexible rule-bound approach which might result in injustice. This is because "[u]ltimately, the underlying consideration of the law of pleadings is to prevent surprises arising at trial…"

45 Mr Lee pleaded at paragraph 5 of his Defence and Counterclaim that the Credit Agreements are "voidable". Rescission is a typical remedy sought where a contract is voidable. Furthermore, RWS was not taken by surprise on this point. Mr Lee pleaded that he ceased making further payments to RWS in or around August 2015.[60] In an earlier version of his AEIC dated 29 November 2017, Mr Lee specified that around August or September 2015, he expressed to Dato' Sri Joseph his refusal to make further payments.[61] Thus, the acts which Mr Lee relies on to establish rescission were brought to RWS's attention before trial. It is not the pleadings but the facts that prevent Mr Lee's reliance on rescission.

Has Mr Lee made attempts to rescind?

46 The issue of pleading aside, Mr Lee is still required to prove, as a factual matter, that he has rescinded the Credit Agreements. This requires a communication, in an unequivocal way, of an intention to disaffirm the agreements. Mr Lee argues that he rescinded the Credit Agreements once he obtained legal advice, in or around August 2015, by:

(a) making clear to RWS's representative, Dato' Sri Joseph, his refusal to make any further payments in respect of the alleged debt; and

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60 Defence and counterclaim (amendment no 1) at para 10(f).

61 Mr Lee's AEIC dated 29 November 2017 at para 76.

(b) ceasing to make further payments to RWS in respect of the disputed debt, and stopping payment on some cheques which he had made out in favour of RWS.[62]

On his own case, therefore, he only rescinded the Credit Agreements *more than five years after the incidents upon which rescission are premised*.

47 RWS contends that Mr Lee did not make any attempt to rescind the Credit Agreement, pointing out that even as at 23 September 2015, when RWS instructed its previous solicitors to send a letter of demand to Mr Lee,[63] Mr Lee did not reply to state that he had rescinded the agreements. By this stage he had been advised by a lawyer sometime in late August or early September 2015 not to make any further payments, which also explained why he stopped making payments to RWS.[64]

48 I agree with RWS. I note that the portion of his AEIC on which Mr Lee relies on to submit that he had rescinded the Credit Agreement indicates that he had not made any express rescission. Paragraph 76 of Mr Lee's AEIC reads as follows:

> In or around late August or September 2015, I received a telephone call from my bank, informing me that one of the Cheques had been presented for payment. I immediately told the bank to stop payment on the Cheque. Mr Joseph then called me, and demanded that I make immediate payment as agreed to under the Alleged Settlement Agreement. I was incredibly upset and surprised. *I reminded Mr Joseph of the agreement and assurances that the Plaintiff would ask me before presenting any of the Cheques for payment. I also reminded Mr Joseph that I had been making periodic payments in the manner that had been agreed, and no one had raised any issues.* Mr

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62 Mr Lee's closing submissions dated 9 May 2018 at para 35.

63 AB at pp 152–154.

64 Mr Lee's AEIC dated 29 November 2017 at para 76.

> Joseph then said that I had to follow what I had signed. I shouted at Mr Joseph that I had never agreed to such a thing, *and that Mr Joseph had gone against what we had expressly agreed*. Mr Joseph then said that if I did not make payment in accordance with the Alleged Settlement Agreement, the Plaintiff would commence legal action against me. I told him that the Plaintiff could go ahead, and that I refused to make any further payments. I had by this time engaged a lawyer in Malaysia, who after hearing my account of the events had advised me to not make any further payments to the Plaintiff. From that point onwards, I did not make any more payments to the Plaintiff.
>
> [emphasis added]

49 Mr Lee's point, in this part of his AEIC was simply that *RWS had not asked him before presenting the cheque for payment*, and that RWS would not take action so long as he continued making periodic payments. *His quarrel as framed in his AEIC was not regarding the validity of the Credit Agreements*.

50 Mr Lee's silence on the validity of the Credit Agreements was also conceded in his cross-examination:[65]

> Q Okay. At this point in time, had you been travelling to Singapore for any reasons in this period 2011, 2012, 2013?
>
> A 2011, 2012, I still sometime follow Mr Lim to come to Singapore but not much like before.
>
> Q And followed them to go where?
>
> A They---they normally checked into a casino, I just go to casi[sic] to enjoy my---
>
> Q Which casino?
>
> A I think mostly Sand.
>
> Q MBS?
>
> A Yes.
>
> Q Marina Bay Sands?
>
> A Yah.

[65] NE, 5 April 2018, pp 46–47.

Q Have you also on these occasions followed them to Resorts World?

A Resorts World, where?

Q Sentosa casino.

A I also follow them but---

Q Okay.

A ---but no gambling.

Q Okay. Now if you had followed them to Resorts World, and you feel that you are not obliged to make these payments, did you raise the issue with any of the management in Resorts World?

A I don't know anyone of them.

Q I know. You see, Mr Lee---

A Mm.

Q ---according to you, you are paying two over million dollars Sing, 5 million Ringgit which you're not obliged to pay but can you confirm you did not raise your objections or you did not tell your story to anyone in Resorts World?

A I have to keep very quiet for fear that this one would surface, I have said many times because I'm doing business.

[emphasis added]

51 Mr Lee placed reliance on various protestations he made to RWS employees and I shall deal with these here. According to Mr Lee, the first denial was in response to a telephone call from a representative of RWS, "some months" after Mr Tan visited Mr Lim and Mr Low in Kuala Lumpur in 2011. At this point, Mr Lee expressed his shock to the employee whose name he does not remember, informing him that he had not gambled nor drawn down on the Credit Facility.[66] A second occasion was around mid-2011, when Mr Lee allegedly met three representatives of RWS and told them that he did not gamble

66 Mr Lee's AEIC dated 4 April 2018 at para 50.

at the Casino or draw down on the Credit Facility.[67] Ms Lee Sook Hun, Senior Manager of Credit and Collections, conceded that Mr Lee alleged, during a 2014 meeting, that he was forced to sign the Credit Agreements, and that he was not the one who gambled with the credit.[68] Dato' Sri Joseph similarly confirmed that Mr Lee said he had not taken any credit or gambled.[69] In addition, Mr Lee claimed that he told Dato' Sri Joseph he was intoxicated when he signed the Credit Agreements.[70] It was also Mr Lee's case that on 9 January 2015, when he met Dato' Sri Joseph to hand him the post-dated cheques, he made it clear that he was issuing those cheques "only as a comfort" for RWS, "not as any acknowledgment of [RWS] money, or any promise of repayment."[71]

52 These protestations are nevertheless insufficient to amount to rescission, because considering the factual context as a whole, they did not amount to an unequivocal demonstration of an intention to disaffirm the transaction. Nor did Mr Lee rely on them as acts amounting to rescission in his closing submission. They were simply feeble and half-hearted complaints, not put, at any time, into written form, and not unequivocal, because Mr Lee made continued payments to RWS at the same time. Despite telling Dato' Sri Joseph he had been intoxicated at the time he signed the Credit Agreements, Mr Lee signed the Handwritten Letter and the Settlement Agreement. Subsequently, he failed to state his position. When RWS sent him their letter of demand dated 23 September 2015, he did not reply to assert his rescission, even though he was legally advised by then.

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67 Mr Lee's AEIC dated 4 April 2018 at paras 55–56.

68 Lee Sook Hun's AEIC dated 9 November 2017 at paras 7–9.

69 Dato' Sri Joseph's AEIC dated 28 November 2017 at para 6.

70 Mr Lee's AEIC dated 4 April 2018 at para 67.

71 Mr Lee's AEIC dated 4 April 2018 at para 71.

53 It is quite clear, therefore, that there was no act of rescission. RWS goes further, to argue that Mr Lee's undue delay and various payments amount, on the facts, to affirmation of the Credit Agreements.

54 Has Mr Lee affirmed the agreements? In *Strait Colonies Pte Ltd v SMRT Alpha Pte Ltd* [2018] SGCA 36 ("*Strait Colonies*"), the Court of Appeal gave the following guidance at [42]:

> A binding election requires the injured party to communicate his choice to the other party in clear and unequivocal terms and he will not be bound by a qualified or conditional decision (*Jurong Town Corp v Wishing Star Ltd* [2005] 3 SLR(R) 283 ("*Wishing Star (CA)*") at [171(a)]). The conduct constituting affirmation "must be unequivocal in the sense that it is consistent only with the exercise of one of the two sets of rights and inconsistent with the exercise of the other" (*Sargent v ASL Developments Ltd* (1974) 131 CLR 634 ("*Sargent*") at 646). This Court stated in *Wishing Star (CA)* at [171(b)] that such conduct can be express or implied. In other words, the appellant must have made a clear and unequivocal election to affirm the Lease Agreement in order for such an election to be binding upon it.

55 Mr Lee contended that a party cannot be held to have made a choice to affirm or rescind a contract unless he has actual knowledge of his legal right to make that choice.[72] Mr Lee premised this submission on the decision of the English Court of Appeal in *Peyman v Lanjani* [1985] Ch 475 ("*Peyman*"). Peyman was considered in *Strait Colonies*, and the Court of Appeal declined to follow the decision, choosing instead to confine it to its "unusual" facts – that the plaintiff was helpless because he was an Iranian who spoke no English: see *Strait Colonies* at [55]–[60]. As the Court of Appeal explained at [61], the "position that knowledge of one's legal rights is required for affirmation could lead to unfairness if the [party at fault] is allowed to hide behind his ignorance of the law and to choose deliberately not to seek legal advice".

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72 Mr Lee's closing submissions dated 9 May 2018 at para 16(b).

56 In *Strait Colonies*, a landlord commenced an action against a tenant over certain units in a shopping mall. In its defence, the tenant asserted that the landlord had misrepresented that the units could be used for the purposes of operating a pub, bar, and club with live entertainment. This was because the landlord had failed to obtain the requisite permission for such uses from the relevant authorities: see *Strait Colonies* at [1]. The landlord succeeded in its action at first instance as Chua Lee Ming J found that the tenant had affirmed the contract after discovering the misrepresentations. The tenant appealed to the Court of Appeal, but was unsuccessful. In upholding the High Court's decision, the Court of Appeal observed that while the landlord had misrepresented to the tenant that certain premises could be used for entertainment purposes, there was no evidence that the tenant had made any qualification when subsequently entering into the lease agreement, taking possession of the relevant premises, commencing business there, or paying rent, even though it was open to the tenant to do so: see *Strait Colonies* at [44]–[45]. As a result, the Court of Appeal took the view that the tenant had affirmed the lease agreement.

57 In *North Ocean Shipping Co Ltd v Hyundai Construction Co Ltd (The Atlantic Baron)* [1979] 1 QB 705, Mocatta J held that a shipbuilding company's threat to break a contract without any legal justification unless the ship owners increased their payments by 10 per cent amounted to economic duress. However, by making further payments under the contract without protest, and delaying for about seven months before making a claim for the return of the extra payments, the ship owners had, through their conduct, affirmed the contract.

58 In my view, Mr Lee did affirm the Credit Agreements by making payments over a five-year period, followed by his signing the Settlement Agreement, and thereafter continuing to make payments on the premise of the

settlement. Such conduct is consistent with affirmation, and wholly inconsistent with rescission. As was said by Kelly CB in more traditional language in *Matthews v Baxter* (1873) LR 8 Exch 132 at p. 133, "… if a drunken man, upon coming to his senses, ratifies the contract, I think he is bound by it".

Are the Credit Agreements void under the CLA?

59 I come then to Mr Lee's second broad argument, that s 5 of the CLA renders the Credit Agreements void because RWS did not comply with the Regulations.

60 Section 5 of the CLA states that "[a]ll contracts or agreements… by way of gaming or wagering shall be null and void". Section s 40 of the CCA (the version in force in August 2010) disapplies s 5 of the CLA in the following terms:

> **Certain contracts in relation to gaming valid and enforceable**
>
> 40. Section 5(1) and (2) of the Civil Law Act (Cap. 43) shall not apply in relation to –
>
> (a) any contract entered into with a casino operator or his agent for the playing in the casino of a game that is conducted by or on behalf of the casino operator or his agent, as the case may be, at any time while the casino licence is in force;
>
> (b) any contract entered into with a casino operator or his agent for the use of a gaming machine in the casino, at any time while the casino licence is in force; and
>
> (c) *any contract for any transaction permitted under section 108, at any time while the casino licence is in force.*
>
> [emphasis added]

61 Mr Lee argues that s 40(*c*) is inapplicable in this case because RWS failed to comply with s 108 of the CCA.[73] Section 108(1)(*d*) states:

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[73] Mr Lee's closing submissions dated 9 May 2018 at paras 42–47.

> **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 —
>
> …
>
> (d) extend any other form of credit;
>
> …
>
> [emphasis in bold italics added]

62 The "regulations" referred to therein are the Regulations (see [14] above), in force at the material time. It is Mr Lee's case that regulations 6*(a)* and 12 were breached. They provide:

> **No unsolicited credit to be granted to patrons**
>
> **6.** A casino operator or a licensed junket promoter shall not —
>
> (a) provide an amount of chips on credit to a patron or enter into any credit transaction permitted under regulation 5 except on the ***prior request*** of the patron;
>
> …
>
> **Credit policy, procedures and controls**
>
> **12**.—(1) Every casino operator and licensed junket promoter shall, before issuing any chips on credit or granting any other form of credit, develop and ***implement a credit policy*** and procedures and controls relating to the granting of credit to its patrons, and shall communicate these to its employees and officers.
>
> …
>
> (3) Every casino operator and licensed junket promoter shall – –
>
> ..
>
> (b) ensure that its ***credit policy***, procedures and controls are implemented in all its branch offices, whether in Singapore or elsewhere; and
>
> …
>
> [emphasis in bold italics added]

Have regulations 6 and 12 been complied with?

63 The starting point of the analysis must be the factual issue as whether these regulations have been breached. I begin by considering regulation 6, which allows the provision of credit to patrons only if the patrons *request* for it: *supra* [62].

64 RWS points to the fact that Mr Lee requested credit by signing the Credit Agreement on 20 August 2018. He also signed a promissory note, which served as collateral for the credit which he would draw down on. He then received $5 million worth of chips and signed the First Credit Marker acknowledging receipt of those chips. In relation to the credit facility obtained on 22 August 2010, RWS relies upon the fact that Mr Lee requested for another $5 million worth of credit by signing the Amendment Form. He then received another $5 million in chips and signed the Second Credit Marker acknowledging receipt of those chips.

65 Mr Lee argues that there was no prior request for credit. His factual case could be summarised as follows: first, he did not orally request the chips; second, RWS staff persistently pressed him to sign documents and take chips; he was so intoxicated that he was not able to understand what he was signing; he was told that if he did not gamble, he would not have to pay; and lastly, he did not gamble.

66 I start with Mr Lee's contention that he did not make an oral request and signed the Request Form and Amendment Form because of Mr Tan's persuasion. In my view, what regulation 6 prohibits is the provision of credit without any request of the patron. In other words, a patron making a request in some form is mandatory prior to the provision of credit. There is nothing,

however, that prohibits a written request that is made after an approach by staff. It bars unsolicited credit, not solicited requests for credit. By signing the Request Form and the Amendment Form, he made requests for credit on 20 and 22 August. A similar approach was taken by the High Court in *Marina Bay Sands Pte Ltd v Ong Boon Lin Lester* [2013] 4 SLR 593 (see [65]–[67]).

67 It follows then that the only way his request would have been vitiated, is in the event that he had been so drunk that he did not understand the fact that he was signing a request for credit. I have dealt with this contention above, and found that he was not so drunk as not to have understood the nature and effect of the Credit Agreements. He also conceded in cross-examination that Mr Tan broadly explained the documents to him. The following passage in his cross-examination on the transaction on 20 August 2010 and his receipt of chips of $5 million is extremely informative:[74]

> Q On the questions you were asked, the most important question is (a), how Tan procured you to sign the credit agreement. *So now I'm asking you, can you remember how Tan got you to sign the documents?*
>
> A *That mean the very moment, he give me the things.*
>
> Q *Can you remember how that happen?*
>
> A *He just give me a few forms---*
>
> Q *And?*
>
> A *---telling me this is for credit, point at the places where I have---need to sign, ah.* He never explain to me nor ask me to wait, I never ask to read also because the---the light in the casino is very, very thin.
>
> Q Yes.
>
> A So I just follow, sign, he took away.
>
> Q Okay. But can you then explain why in this document at page 41, you said you can't remember?

[74] NE, 5 April 2018, pp 54–55.

A I don't know what are the form he give, it's---

Q *No, no, no, in this document [the FNBP] you say you can't remember---*

A *Okay.*

Q *---because you were too drunk. Which is correct? You can remember or you're too drunk to remember?*

A *Yah, he give me something to sign, I don't know---*

Q *Which is correct, you can remember or you were too drunk to remember*?

A *I still remember.*

Q *You still remember?*

A *Mm.*

Q *So you can remember the events, you can remember Tan giving you the forms, right? Yes or no?*

A *Yes.*

Q *You knew that the form was for credit facility, right?*

A *He told me.*

Q *So you knew it's for credit facility?*

A *In fact, he told me not*---exactly and explaining it to me.

Q Never mind, forget whether he explain the terms.

A Yes.

Q You knew it was for credit facility, right? Yes or no?

A Yes.

[emphasis added]

68 As counsel for RWS pointed out, Mr Lee received his chips in two halves. By 22 August, it would have been clear to him that the first $5 million had been spent:[75]

Q Now, you at this point in time knew that you had taken credit earlier. Am I right?

[75] NE, 5 April 2018, pp 37–38.

A Yes.

Q *You knew that you had taken $5 million in chips earlier. Am I right?*

A *Yes.*

Q *Now, they were asking you to take another 5 million. Right?*

A *Yes.*

Q First question you will ask is, "What happened to my first 5 million?" Right?

A I didn't ask.

Q Okay. But did you wonder what happened to your first 5 million?

A I actually don't---as I was all told by him, "If you don't gamble, you don't have to pay." Because I don't gamble.

Q Right. But he's giving you another $5 million credit. If you recall, they had given you 5 million in chips. Am I right?

A Yes.

Q So aren't you wondering why you must take another 5 million in chips when your first 5 million is still there?

A I'm in a very happy situation under influence of the alcohol. I'm very open to persuasion. I take it as---and I still believe that what he say will be okay. If I don't gamble, I don't have to pay back.

Q *You see, Mr Lee, when you were given the second set of 5 million in chips, I'm suggesting to you the first thought that should have crossed your mind is: What happened to the first 5 million? Am I right?*

A *You have---you assume that? I don't think so.*

[emphasis added]

69 Mr Lee clearly received the chips and knew they were his responsibility:[76]

[76] NE, 5 April 2018, pp 76–78.

Q Okay. You acknowledged your request by filling up the form. And I want you to look at the document in the agreed bundle of documents, go to page 1. Sorry, not by filling up, by signing on the form that says "credit or cheque cashing facility request form". This is how you requested for the 5 million.

A This---

Q Agree or disagree?

A Yes, I signed on it, yah.

Q No, and you requested for the money by this form. Agree or disagree?

A That means I asked for the money?

Q Yes.

A Or this is application is it?

Q That's right.

A Application?

Q That's right.

A Yah, this application I signed for the application of the credit facility, but I never ask for the chips.

Q Okay. So let's move on then. Later that day or soon after - if you turn to page 5 - you received $5 million in chips and acknowledged getting it by signing on the marker. Agree or disagree?

A This thing because I signed. Because he told me, "As far as if you don't use it, you don't have to pay back." She---I---that's why I say, "You put on the table."

Q Okay. Now if you look at page 3 of this bundle, on 22nd August - 2 days later - you requested an amendment to your credit line in having it increased from 5 million to 10 million. Agree or disagree?

A I signed, but I never requested.

Q Okay. Can you now turn to page 21? By the marker in the middle of the page, you then acknowledged receiving another 5 million in chips.

A *Yes, they passed the chips to me.*

[emphasis added]

70 Viewed in this light, his contention that he was told that if he did not gamble he would not have to pay was rather spurious. Misrepresentation was neither pleaded nor alleged. His contentions, in any event, were unbelievable in the light of the fact that he knew he received $10 million worth of chips. He would have been aware that by signing the Credit Agreements, he became responsible for the chips, whether it was he or the others in his group who used them. In my judgment, it is clear that Mr Lee requested for credit by signing the Credit Agreements.

71 I deal next with regulation 12. Mr Lee's case is that RWS breached this regulation, because RWS had, contrary to paragraph 2.A.1.1 of its Credit Policy, failed to ensure that proper checks were conducted before the Credit Agreements were filled up. This reads:

> A1.1 Application Approval
>
> a. The credit application must be supported by the following documents:
>
> (i) Credit application form
>
> Information required under compulsory or mandatory fields in the application must be filled or provided by patron;
>
> *(ii) Identification credentials* including but not limited to: Identification Card, Passport or other government credentials;
>
> *(iii) Know Your Customer* (KYC) and *Letter of Recommendation* form from the Casino Marketing personal, where applicable.
>
> *(iv) Credit/CCF Assessment Checklist* from the Casino Credit Department, where applicable.
>
> …
>
> [emphasis added]

72 In Mr Lee's words, RWS's representatives had only "gone through the motions of completing the Credit Agreements and complying with Internal Protocol". Again, allegations were made about Mr Tan on this issue. As I have

found that Mr Lee was not intoxicated and that he had also requested for credit, the only contention remaining, and which I shall deal with here, is whether the RWS representative had acted properly in recommending Mr Lee for credit.

73 The internal recommendation was made by Yap Ee Lim ("Mr Yap"), RWS's director of business development. Mr Yap's signature appears at the top right of the Request Form, under the heading "for internal use only". Through signing the Request Form, Mr Yap recommended that Mr Lee be provided credit of up to $5 million. The following paragraph appears above his signature on the Request Form:

> I believe the information contained herein supports the credit limit requested. I also believe that this customer will repay the credit granted in accordance with the terms stated herein. I will be responsible for assisting in the collection of any outstanding balances associated with this recommendation. This customer has been made aware of the collection policy.

74 Mr Lee takes issue with the fact that Mr Yap was, on his own account, not familiar with Mr Lee, and signed the Request Form only because Mr Tan had told him to. In other words, Mr Yap had not seen the results of any credit searches conducted on Mr Lee, and did not otherwise have first-hand knowledge of Mr Lee's background when he made the recommendation.[77] Mr Lee further highlights that on RWS's own case, the credit and background checks would be conducted by its credit department, which would hand the results over to the marketing department. However, the only communication between the two departments tendered by the plaintiff is an email from the credit department to the marketing department, setting out the credit background check of Mr Lee.[78] Pertinently, the email is dated 29 September 2010, more than a month after the

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77 Mr Lee's closing submissions dated 9 May 2018 at paras 56–59; NE, 4 April 2018, pp 22–25.

78 Exhibit P2.

Request Form was signed. In the circumstances, Mr Yap could not have relied on the credit department to highlight any issues with Mr Lee, because its findings were only brought to the attention of the marketing department more than a month after the event. Thus, Mr Yap signed the Request Form without having reviewed the credit department's findings, in breach of the Credit Policy.[79]

75 The 29 September 2010 email relied upon by Mr Lee should be dealt with first because in his submissions, Mr Lee erroneously assumes that prior to this email, the credit department did not inform the marketing department of Mr Lee's credit background checks. This assertion was not, however, put to any of RWS's witnesses, including Ms Tan. It was the unchallenged evidence of Ms Tan that before Mr Lee drew down the Credit Facility on 20 August 2010, the signed Request Form was passed to the credit department for the following checks to be conducted:[80]

(a) a search of the Exclusion List issued by the Casino Regulatory Authority or by RWS;

(b) a Credit Bureau search done with Central Credit LLC, a system used by casinos globally, which indicates if the applicant has previously taken credit from any casino.[81]

(c) a search on the applicants' directorships and shareholdings in companies, as evidenced in a CTOS Report;[82] and

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79 Mr Lee's closing submissions dated 9 May 2018 at para 59.

80 Ms Tan's AEIC dated 9 November 2017 at paras 18–19.

81 AB at p 38.

82 AB at pp 39–43.

(d) a general search on Google.

76 The credit department then informed the marketing department that Mr Lee was deemed creditworthy. It was only then that the credit department created an account allowing Mr Lee to drawn down on the Credit Facility.[83] Ms Tan's evidence is corroborated by an assessment checklist, signed by an RWS employee on 20 August 2010, indicating that the above checks were carried out with no adverse results.[84] On a related note, Mr Yap testified that he would have been alerted if these searches raised any red flags,[85] but, as it were, there were none.

77 I am of the view, therefore, that the requirements specified in regulations 6 and 12 have been met. Mr Lee had made written requests for credit. Thereafter, RWS carried out various credit searches pursuant to its policy prior to granting his requests. There was no breach of the statutory provisions.

Effect of non-compliance

78 RWS further submits that any breach of the Regulations would not by itself confer on Mr Lee a private law cause of action. RWS premises this submission on two cases, the first of which is *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633 ("*X (Minors)*)". In that case, local authorities breached their statutory duties by failing to protect certain children who were at risk. The question before the House of Lords was "whether, if Parliament had imposed a statutory duty on an authority to carry out a particular function, a plaintiff who has suffered damage in consequence of the authority's performance or non-

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83 Ms Tan's AEIC dated 9 November 2017 at para 22.

84 Exhibit P3.

85 NE, 4 April 2018, pp 24–25; Mr Yap's AEIC dated 9 November 2017 at para 9.

performance of that function has a right of action in damages against the authority": see p 730. Their Lordships held, at p 731, that a breach of a statutory duty would only give rise to a private law cause of action only if "as a matter of construction of the statute, that statutory duty was imposed for the protection of a limited class of the public and that Parliament intended to confer on members of that class a private right of action for breach of the duty". Applying this test, their Lordships concluded that the local authorities did not owe a duty of care to the claimants.

79 That holding in *X (Minors)* was applied by Belinda Ang Saw Ean J in *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2009] 4 SLR(R) 788 ("*Skandinaviska*"), the other case relied on by RWS. In *Skandavanviska*, the plaintiff sought to premise its negligence claim on the defendant's breach of s 199(2A) of the Companies Act (Cap 50, 2006 Rev Ed), which obliges every public company (and its subsidiaries) to maintain a system of internal accounting controls to safeguard its assets. Ang J, in rejecting the plaintiff's arguments, held that the plaintiff did not fall within the limited class intended to be protected under s 199(2A), nor was there any indication that Parliament intended to arm those within the limited class with a civil remedy against the company for breach of that statutory duty: *Skandinaviska* at [212].

80 In my view, the present case is different in context from *X (Minors)* and *Skandinaviska*. In those cases, the plaintiffs sought compensation for the defendants' breach of statutory duty. This is not the case here. Mr Lee does not seek compensation from RWS for its alleged breach of the Regulations. What he argues is that their breach renders any contracts effected to be void. This is because: (1) s 5 of the CLA lays down the general rule that gaming contracts are void; (2) this rule is subject to exceptions; (3) the exception relied on by

RWS does not apply because the conditions set out in the Regulations were not complied with; and (4) the Credit Agreements are thus void under s 5 of the CLA. Mr Lee does not rely on the purported breaches as a direct basis for a claim; he merely relies on them show that the agreements are unenforceable under the CLA. It would perhaps have been appropriate to consider the application of *Ochroid Trading Ltd and another v Chua Siok Lui (trading as VIE Import & Export) and another* [2018] 1 SLR 363 ("*Ochroid*"), where the Court of Appeal dealt with the doctrine of illegality and public policy in the context of contracts prohibited by statute. But as neither counsel argued the point, I do not deal with it here. In any case, it is unnecessary for me to do so given my findings on regulations 6 and 12.

Conclusion

81 Mr Lee's defences having failed, I dismiss his counterclaim. The amounts claimed by RWS remain undisputed. In the result, I grant judgment to RWS as claimed, as follows:

(a) The sum of $5,930,595.00.

(b) Interest at a rate equal to the Singapore Interbanking Offer Rate at one, three or six months, plus 4% (whichever is higher), pursuant to Clause (J) of the terms and conditions of the Credit Agreements.

I shall hear parties on costs.

Valerie Thean
Judge

N Sreenivasan SC, Shankar s/o Angammah Sevasamy and Lim Min
(Straits Law Practice LLC) for the plaintiff;
Palmer Michael Anthony and Reuben Tan Wei Jer
(Quahe Woo & Palmer LLC) for the defendant.
