Marina Bay Sands Pte Ltd *v* Ong Boon Lin Lester
[2011] SGHC 73

Case Number : Suit No 792 of 2010 (Summons No 88 of 2011)

Decision Date : 30 March 2011

Tribunal/Court : High Court

Coram : Shaun Leong Li Shiong AR

Counsel Name(s) : Surenthiraraj s/o Saunthararajah @ S.Suressh and Toh Wei Yi (Harry Elias Partnership LLP) for the plaintiff; Sunil Singh Panoo (Dhillon & Partners) for the defendant.

Parties : Marina Bay Sands Pte Ltd — Ong Boon Lin Lester

Statutory Interpretation – Construction of Statute – Casino Control Act (Cap 33A, 2007 Rev Ed) ("CCA") – Whether the debtor was a premium player under the CCA – Whether the debtor's play had expired by the time of credit extension – Allegation of unsolicited offer of credit

30 March 2011

Shaun Leong Li Shiong AR:

Introduction

1 The plaintiff (referred to in this decision as "the Casino" in some instances) granted the defendant, a Singaporean, credit and issued him $250,000 worth of chips under credit for play at the plaintiff's premises. Sometime after the chips were fully utilised, the plaintiff claimed for the sums owed. The defendant however, disputes the enforceability of the debt. He claims that he was not a premium player at the time when credit was extended to him. As s108(7) of the Casino Control Act (Cap 33A, 2007 Rev Ed) ("CCA") mandates that the plaintiff can extend credit to a Singapore citizen only if he/she is a premium player, the defendant alleged that the credit extended to him was an unenforceable moneylending transaction under s108(9) of the CCA read with s14(2) of the Moneylenders Act (Cap 188). The present dispute therefore centered upon the question of whether the defendant was a premium player as defined under the Casino Control Act (Cap 33A, 2007 Rev Ed) ("CCA") and the Casino Control (Credit) Regulations 2010 ("Credit Regulations") at the time when credit was extended to him. The plaintiff applied for summary judgment. I granted leave to defend upon the condition that the defendant pay into court, or provide security by way of a banker's guarantee, the full amount of the claim (*ie* the sum of $240,868.00 with interest on the said sum at the annual rate of 12% from 14 August 2010 until 25 March 2011 (without prejudice to the plaintiff's claimed sums as stated in its pleadings)), by 26 April 2011, failing which the plaintiff would be at liberty to enter final judgment against the defendant. I now set out the reasons for my decision.

The Facts

2 According to the defendant, he visited the plaintiff's premises to gamble soon after it was opened for business. [note: 1] After some time, the defendant registered to be a member of the Paiza club on 30 April 2010 [note: 2] (gaming date [note: 3]), which is the plaintiff's exclusive club for its valued patrons. The defendant also enrolled in the Non-Negotiable Chip Rolling Program. [note: 4]

3 On 1 May 2010, at around 5.12am, the defendant paid the plaintiff a sum of $100,000 in cash, and a deposit account was opened in the defendant's name where the said sum was deposited into the account. According to the plaintiff, this qualified the defendant as a premium player defined under the Casino Control Act (Cap 33A, 2007 Rev Ed) ("CCA") and the Casino Control (Credit) Regulations 2010 ("Credit Regulations"). The plaintiff issued $100,000 non-negotiable chips ("NN1 chips") to the defendant about two minutes later, at around 5.14am. NN1 chips are issued to patrons enrolled in the Non-Negotiable Chip Rolling program; where the patron puts down his bet using the NN1 chips, and any amount that he wins on the bet is paid to him in cash. The net rolling turnover is the difference between the total NN1 chips that were issued to the patron and the total NN1 chips that were returned at the time of settlement after a stipulated maximum period of play. The patron earns a rolling commission on the net rolling turnover which is either paid to the patron by cash, or cash equivalent, or by credit into his deposit account. Shortly after the NN1 chips were issued, the defendant commenced play at around 5.35am. [note: 5] The defendant emphasized on the fact that his money balance in the deposit account was "nil" at this point in time when he commenced play. After a few hours, at around 8.09am, the defendant exchanged 75,000 NN1 chips and 25,000 cash chips for $100,000 cash.

4 Subsequently, the defendant applied for credit from the plaintiff. Sometime between 11pm on 1 May 2010 to 5.59am on 2 May 2010, the defendant signed and submitted the plaintiff's Credit/Cheque Cashing Agreement ("Credit Agreement") to apply for credit of $1m. [note: 6] This was admitted to by the defendant (save that the defendant does not recall the exact time in which this took place). [note: 7] The defendant however, claims that the plaintiff made an unsolicited offer of credit to the defendant. [note: 8] He claimed that he applied for credit because he was enticed to do so by one of the plaintiff's marketing hosts. [note: 9] After the defendant had applied for credit, he returned to continue his play, with a series of credits and debits made on his deposit account.

5 Although the defendant applied for credit of $1m, the plaintiff approved his credit for a lesser amount of $250,000. The approval was granted on 3 May 2010 at around 1.45am. Subsequently, the plaintiff issued $250,000 worth of NN1 chips on credit to the defendant at around 2.49am on the same day. The defendant emphasized on the fact that the money balance in his deposit account at this point in time was a "nil" balance. The chips issued on credit were fully utilized by a few days later on 9 May 2010. The defendant provided the plaintiff a cheque made payable to the plaintiff, as security for the plaintiff's issuance of credit to the defendant.

6 On 13 May 2010, the date when the Non-Negotiable Chip Rolling Program expired, the defendant earned an overall rolling commission of $9,132.00. This amount was credited to the defendant's deposit account. As such, after this amount was set off from the original principal amount owed (which was the amount of $250,000), the total sum owed to the defendant was $240,868.00. Between 17 June 2010 and 8 July 2010, the plaintiff contacted the defendant to make payment of the debt owed. The defendant would inform the plaintiff's representative that he would try to make payment. Subsequently, the plaintiff presented the defendant's cheque on 9 July 2010, but the cheque was dishonoured and returned on 12 July 2010.

The Decision

Statutory provisions

7 Section 108(7)(a) and (b) of the CCA states that the plaintiff may issue chips on credit to a Singaporean or permanent resident only if he/she is a premium player, and if the plaintiff and borrower satisfies the requirements of the relevant controls and procedures approved by the Casino Regulatory

Authority ("CRA") under s 138 of the CCA:

> (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,
>
> 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.

Section 2 of the CCA provides the definition of a "premium player":

> "premium player" means a patron of a casino who 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;

8 It is clear that a patron is a premium player if he maintains a deposit account of not less than $100,000 before the commencement of play. The same requirement is provided in section 3(1) of the Credit Regulations:

> When patron qualifies as premium player
>
> 3.—(1) A patron of a casino qualifies as a premium player of the casino when, before the commencement of play by him in the casino —
>
> (a) the total amount of money, chips or any cheque or traveller's cheque credited to the patron's deposit account in accordance with paragraph (2) is not less than $100,000; or
>
> …
>
> (2) For the purposes of paragraph (1)(*a*), only the following types of payments into a patron's deposit account may be reckoned for the purpose of satisfying the minimum credit balance of $100,000:
>
> (a) money received by the casino operator from the patron in the form of cash, a cashier's order or a bank draft payable to the casino operator or an electronic funds transfer to the casino operator's bank account;
>
> (b) chips or any traveller's cheque received by the casino operator from the patron;
>
> (c) any casino cheque payable to the patron, which is accepted by the casino operator;
>
> (d) any personal cheque issued by the patron made payable to the casino operator, after the cheque has been deposited with and cleared by an authorised bank.

9 Section 108(9)(a) of the CCA provides that the plaintiff would be deemed a moneylender under the Moneylenders Act (Cap. 188, 2010 Rev Ed) if it provides chips on credit to a Singapore citizen who is not a premium player. The section is reproduced as follows:

(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)

10 If the plaintiff was indeed an unlicensed moneylender, the Credit Agreement and the cheque provided by the defendant would be unenforceable, under section 14(2) of the said Act, which states that:

Where any contract for a loan has been granted by an unlicensed moneylender, or any guarantee or security has been given for such a loan –

(a) the contract for the loan, and the guarantee or security, as the case may be, shall be unenforceable; and

(b) any money paid by or on behalf of the unlicensed moneylender under the contract for the loan shall not be recoverable in any court of law.

11 Section 2 of the CCA was adopted from s 3 of the Australian, Victoria, Casino Control Act 1991 (Act No. 47 of 1991) ("VCCA"). There is no definition of "premium player" provided, but s3 states:

premium player arrangement means an arrangement whereby a casino operator agrees to pay a patron of the casino a commission based on the patron's turnover of play in the casino or otherwise calculated by reference to such play

12 The understanding of a premium player under the VCCA would be equivalent to a patron who is eligible to enrol into the plaintiff's Non-Negotiable chip Rolling Program, where the plaintiff would pay the patron a commission on the net rolling turnover. Section 68(8) of the VCCA differs from s108(7) of the CCA, in that the former allows the casino to provide chips on credit to a patron who is not ordinarily resident in Australia in the patron is participating in a premium player arrangement:

(8) Despite subsection (2), a casino operator may provide chips on credit to a person who is not ordinarily resident in Australia for use while participating in-

(a) a premium player arrangement with the casino operator; or

(b) a junket at the casino

if the casino operator and the person satisfy the requirements of any relevant controls and procedures approved by the Commission under section 121 in respect of a premium player or a junket player (as the case may be).

13 Section 5 of the Australian, Victoria, Casino Control (Junkets and Premium Players) Regulations 1999 provides a somewhat general definition of a premium player:

premium player means a patron of a casino who participates in a premium player arrangement with the casino operator, whether or not the patron is also a junket player

14 Having reviewed the relevant statutory provisions, I turn my attention to the discussion of the pertinent issues.

Was the defendant a premium player?

15 It was not disputed that on 1 May 2010, the monies in the defendant's deposit account was drawn upon to issue $100,000 worth of chips to him, just about 2 minutes after when the cash amount of $100,000 was credited into his deposit account. The deposit account remained opened in the defendant's name, and as shown above, what followed was a series of credits and debits to his deposit account. The defendant argued that because the deposit of monies followed almost immediately with a withdrawal in value of the same amount in chips, it was essentially an exchange of cash for chips disguised as a deposit. [note: 10] He argued that, although s 2 of the CCA uses the phrase "*before* the commencement of play", a patron is required to maintain the sum of $100,000 *at the commencement of play* or almost immediately before the commencement of play in order to qualify as a premium player. [note: 11]

16 A relevant principle of statutory interpretation would be that the relevant statutory provision should be construed in accordance to Parliament's intention *as expressed in the language used*; this has been described as the "cardinal rule" of statutory interpretation in *Craies on Legislation* (9th Ed, London: Sweet & Maxwell 2008) at 611. The fundamental premise of this principle lies in the assumption that words used in legislation enacted by Parliament are used with precision to reflect its legislative intent. As observed by Lord Reid in *Pinner v Everett* [1969] 1 WLR 1266 at 1273:

> In determining the meaning of any word or phrase in a statute the first question to ask is always what is the natural or ordinary meaning of that word or phrase in its context in the statute. It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature that it is proper to look for some other possible meaning of the word or phrase.

17 Lord Blackburn's endorsement of the observations in *Grey v Pearson* (1857) 6 H.L.C. 61 in the decision of *Caledonian Railway v North British Railway* (1881) 6 App. Cas. 114 at 131 is also relevant:

> I have been long and deeply impressed with the wisdom of the rule, now, I believe, universally adopted…that in construing…statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument…

18 Section 9A of the Interpretation Act (Cap 1, 2002 Rev Ed) ("Interpretation Act") requires the court to interpret a written law in a way that would promote the purpose of the written law. In my view, the relevant statutory provision should be read in its plain and ordinary meaning *in so far as* the precise words used reflects Parliament's intention behind the statutory provision in question. It follows that the plain and ordinary meaning of the words should not be adhered to, if it is shown that the ordinary reading of those words do not reflect Parliament's intention. This could be done by adducing authority, or by way of reasoning, to show that the plain reading of the words does not purport to resolve the mischief in which the very statutory provision was enacted to resolve. This could also be done by showing that the plain reading of the words would lead to an absurd, illogical or repugnant result. (I add parenthetically that, it would at times be observed that the drafters of the statute intentionally included a phrase or a word which has multiple "ordinary meanings", to add flexibility in the interpretation of the provision; but that is not the situation in the present case, as shown in [20]). A strict adherence to Jacques Derrida's philosophical assertion that "there is nothing outside of the text" has no place amongst the principles of statutory interpretation, for, as aptly reminded by Lord Bingham of Cornhill in the House of Lords' decision of *R (Quintavalle) v Secretary of State for Health* [2003] 2 W.L.R. 692:

> The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. Such an approach…may…lead to the frustration of [Parliament's] will, because undue concentration on the minutiae of the enactment may lead to the court to neglect the purpose which Parliament intended to achieve when it enacted the statute…The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose.

19 Indeed, to insist on the literal reading of the provision despite showing either of the instances stated above at [18], would in fact be contrary to the spirit of the cardinal rule; as explained above, the cardinal rule is premised upon the fundamental assumption that the *legislative intent* is found in the precise words used. If this assumption is shown to be false, the court has to depart from the literal reading. In this regard, the burden lies on the party who asserts that the plain and ordinary meaning of the words should not be followed, to explain why this assumption should be disturbed. As distinctly emphasized by per Lord Hewart C.J in *Spiller Ltd v Cardiff (Borough) Assessment Committee* [1931] 2 K.B. 21 at p 43:

> It ought to be the rule, and we are glad to think that it is the rule, that words are used in an Act of Parliament correctly and exactly, and not loosely and inexactly. Upon those who assert that that rule has been broken the burden of establishing their proposition lies heavily. Any they can discharge it only be pointing to something in the context which goes to show that the loose and inexact meaning must be preferred.

20 In the present case, the phrase "before the commencement of play" in s 2 of the CCA is clear and unambiguous. In particular, the word "*before*", used in the context of that phrase, is grammatically capable of one meaning only. A given definition of the word "before" is "during the period of time preceding a particular event or time". [note: 12] This is diametrically opposed to the word "at", which has been defined as "expressing the time when an event takes place". [note: 13] If the patron is, as asserted by the defendant, required to maintain the sum of $100,000 at the commencement of play, the patron would have to maintain *more than* the sum of $100,000 *before* the commencement of play, so that some monies can be exchanged for chips to commence play. This is not set out in the language of the CCA.

21 The rationale behind the requirement for the patron to maintain a deposit account of a minimum sum of $100,000 *before* the commencement of play, under s 108(7) of the CCA, is to ensure that patrons of the Casino will not be able to obtain credit for gambling *so easily*. [note: 14] As observed by Associate Professor Ong Soh Khim in the Second Reading of the Casino Control Bill (*Singapore Parliamentary Debates*, 14 February 2006, vol 80, col 2424):

> …clause 108 states that the casino operators may provide credits [*sic*] to a person who is not a citizen or a permanent resident of Singapore. The casino operators may provide credit to a citizen or a permanent resident of Singapore who has maintained a deposit account with the casino operators with a credit balance of not less than $100,000. This stringent requirement is necessary to ensure that patrons will not be able to obtain credit for gambling easily.

22 The defendant and his counsel did not provide any reasoning or authority (save for an unconvincing reliance on a Parliamentary excerpt, which has been dealt with below at [29]-[30]) to show that the rationale of preventing patrons from obtaining credit easily would be defeated by a plain and ordinary reading of the word "before". The defendant's counsel argued that, in order to qualify as a premium player, a patron has to maintain the sum of $100,000 either at the

commencement of play or immediately before the commencement of play, because the word "before" cannot extent to hours or days before the commencement of play. [note: 15] However, this purported situation of a patron establishing a deposit account with an immediate withdrawal of chips of the same value, *made days or hours* before the commencement of play, was a *hypothetical* one which defied common sense. It was inexplicable why any patron would leave a substantial amount of monies (in particular, the sum of $100,000) in the Casino's deposit account, which provides no interest rates, for hours and days without drawing upon the monies to exchange for chips to play in the Casino (in any event, it should be noted that counsel's hypothetical situation did not apply to the present case, as the defendant maintained a deposit account of not less than $100,000 at around 22 minutes before the commencement of play). The defendant may argue that the patron would benefit from being eligible to apply for credit by simply depositing the sum of monies, and leaving the monies untouched for days without playing at the Casino. This cannot be the case, because, as will be shown later, the relevant rules require the patron to draw-down all the monies in the deposit account before credit can be issued to the plaintiff. In my view, the defendant's strained construction of the word "before" to create an absurdity which Parliament has not created, based on a hypothetical situation that defies common sense, cannot defeat the plain and ordinary meaning of the word, for that strained construction in itself treads close to being an absurdity. As the defendant failed to disturb the assumption that the precise words used by Parliament reflects its legislative intent, I have no doubt that the defendant, having maintained a deposit account of not less than $100,000 before the commencement of play, was, in accordance with s2 of the CCA, a premium player qualified to obtain credit from the plaintiff.

23 Indeed, the plaintiff's counsel highlighted how several rules and regulations would support the plain and ordinary reading of s 2 of the CCA. In this regard, he relied on s 9A(2)(a) of the Interpretation Act, which is reproduced as follows:

> Purposive interpretation of written law and use of extrinsic materials
>
> 9A. —(1) In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.
>
> (2) Subject to subsection (4), in the interpretation of a provision of a written law, *if any material not forming part of the written law is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material* —
>
> (a) *to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law*

24 In the present case, the monies in the deposit account were drawn-down in exchange for the issuance of chips. Although the defendant found fault with this by arguing that this was an "exchange of chips in the guise of a deposit", this was in fact entirely consistent with the requirement (found in the relevant rules which will be discussed shortly) for the cash amounts in the deposit account to be fully drawn-down as a precondition to the issuance of chips on credit. In particular, section 63 of the Internal Controls Code (Treasury) ("ICC") of October 2009, issued by the CRA, requires the plaintiff to establish a hierarchical order of drawn-downs from the patron's account, such as the credit and deposit accounts. [note: 16] In accordance with the ICC, the funds in a deposit account are required to be utilized first before any credit may be drawn. [note: 17] This is consistent with the Casino Credit

Policy: Credit Account Establishment Criteria and Procedures ("Credit Policy"), which sets out the plaintiff's criteria and guiding principles on the extension of credit to casino patrons. [note: 18] In particular, the Credit Policy states the requirement for the patron's deposit account to be drawn-down before access is granted to the credit account: [note: 19]

> Casino credit and cheque-cashing privileges are facilitated by creating a patron account through which cheque cashing, chips on credit, and/or credit for a deposit account are granted [Casino Credit Regulation 8(1)(a)(b)]. *It is the policy of MBS to require draw-downs from the patron's deposit account before granting access to the patron's credit account*. This policy is made available in the Credit Agreement for the patron's review and signature.

25 In the same vein, clause 5 of the Credit Agreement informs patrons of this hierarchy of access to funds: [note: 20]

> Credit issued by the Lender to the Borrower shall be granted only by means of transfer of casino chips of the Lender to be used by the Borrower solely for gaming at the casino of the Lender. *If the borrower has a deposit account with the Lender, these funds will be used before any credit draw-down is permitted*…
>
> [emphasis added]

26 It can therefore be seen from the relevant rules above that the precondition to obtaining credit from the plaintiff is that, the patron has to fully utilize all the monies in his deposit account. In the defendant's view however, the "nil" balance in the deposit account would mean that the patron is not qualified as a premium player and would be ineligible to obtain credit from the plaintiff. Such a view would render it impossible for Singaporean patrons to obtain credit, as compliance with the ICC, the Credit Policy and the Credit Agreement ("the rules") would prevent the patron from having any monies, much less the minimum sum of $100,000, in the deposit account. Consequently, the defendant's view would defeat the purpose of s 108(7) of the CCA to enable the extension of credit to Singapore citizens.

27 In the hearing before me, the defendant's counsel argued that, the rules only require that the amounts in the deposit account be fully utilized *before credit is issued*, as opposed to before the commencement of play. As such, the defendant's counsel submitted that to qualify as a premium player, the patron can deposit more than $100,000 to set up the deposit account (for example, a sum of $105,000), draw an amount from the deposit account to exchange for chips before play (for example, the sum of $5,000), but maintaining the sum of $100,000 at the start of play; and after play has commenced but before credit is issued, exchange the rest of the monies in the deposit account ($100,000) for chips to satisfy compliance with the rules (the patron in this hypothetical shall be referred to as "patron A"). [note: 21] The defendant's counsel did not provide any rationale for such a complicated set of requirements to qualify as a premium player.

28 The submission made by the defendant's counsel is tenuous. As explained, the rationale behind the requirement for the patron to maintain a deposit account of a minimum sum of $100,000 before the commencement of play, is to ensure that patrons of the Casino will not be able to obtain credit for gambling so easily. In this regard, both patron A and the defendant in the present case have deposited at least $100,000 into the Casino before the commencement of play. By doing so, they have both shown sufficient financial wherewithal, and hence demonstrated themselves to be credit-worthy enough to be eligible for credit extended by the plaintiff. Furthermore, it is interesting that clause 1 of the Credit Agreement seems to suggest that, as a matter of course, only the sum of

$100,000, and not more, is expected to be deposited by patrons who wish to apply for credit, thus rendering the complicated set of requirements (as submitted by the defendant's counsel) to be highly unlikely. Clause 1 of the standard form Credit Agreement states that: [note: 22]

> The Borrower states that he/she is not a citizen or a permanent resident of Singapore. If the Borrower is a citizen or permanent resident of Singapore, the Borrower attests that the Borrower has deposited SGD $100,000 with the Lender.

29 Before I conclude this part of the analysis, I would mention that the defendant's counsel sought to rely on the following excerpt of Parliamentary Debates to support his position (Second Reading of the Casino Control Bill (*Singapore Parliamentary Debates*, 14 February 2006, vol 80, col 2312), per Deputy Prime Minister and Minister for Home Affairs (Mr Wong Kan Seng)):

> Clause 108 of the bill shall prohibit casino and junket operators from extending credit to Singapore citizens and permanent residents, unless they maintain a credit balance of at least $100,000 with the casino operator *at the start of their gaming*, which would qualify them as premium players.
>
> [emphasis added]

30 Counsel's citation of the above excerpt provides very little assistance, if any, as counsel did not explain what was meant by "at the start of gaming". More importantly, counsel did not explain *how* this phrase was the *same* as, or *different* from, the phrase "before the commencement of play" found in s2 of the CCA, and the phrase "period of play" found in section 4 of the Credit Regulations.

31 The defendant provided a second argument: even if the defendant was a premium player on 1 May 2010 (when he set up the deposit account with the minimum sum before he commenced play on that day), his play had expired by 3 May 2010, the day when credit was issued to him. This was allegedly because play had expired when he left the Casino and went home sometime between 1 to 3 May 2010. This argument is dealt with below.

Did the defendant's play expire by the time he commenced play on 3 May 2010 (the same day which credit was extended to him)?

32 The defendant pleaded that he did not qualify as a premium player at the time when the chips of $250,000 was issued to him on credit on 3 May 2010 because: [note: 23]

> …he did not have the minimum credit balance of $100,000.00 in his deposit account with the Plaintiff before the commencement of play on 3 May 2010 as alleged by the Plaintiff or on such date as when the credit of $250,000.00 was extended to the Defendant.

33 In particular, the defendant argued that once a patron stops play at the casino for the day, and leaves the casino's premises, "play" would expire. [note: 24] The defendant claimed to have gone home after play on 2nd May 2010. [note: 25] As he left the Casino then, his "play" had allegedly expired. [note: 26] On the next day when the defendant commenced a new period of play on 3 May 2010 (which was the day that credit was extended to him), the defendant's balance in his deposit account did not have the minimum amount of $100,000. It was in fact a "nil" balance. As such, it was argued that the defendant did not qualify as a premium player. The defendant's argument is wholly misconceived, and is premised upon an *absurd* interpretation of the Credit Regulations. Section 4 of the Credit Regulations provides for the period in which a patron would remain qualified as a premium player, and is reproduced below as follows:

Period when patron remains qualified as premium player

4.—(1) Subject to paragraph (2), a patron remains qualified as a premium player of a casino if, upon the expiry of *a period of play* and before subsequent commencement of a *period of play* by him in the casino, there is a credit balance of not less than $100,000 in his deposit account with the casino operator of that casino.

(2) The *maximum period of play* by a patron in a casino shall be a *continuous* period of one year.

(3) A patron ceases to be a premium player if he is no longer qualified as a premium player in accordance with paragraph (1) or upon the closure of the patron's deposit account with the casino operator.

[emphasis added]

34 Although there is no definition provided for "a period of play", section 4(2) clearly states that there can be a *maximum* period of play for a *continuous period* of one year. As stated above, the defendant's definition of period of "period of play" depended upon the patron's presence at the Casino. By the defendant's definition of "period of play", section 4(2) would contemplate the *absurd* situation that a patron can be physically present in the casino for a *continuous* period of one year. Surely, the drafters of the Credit Regulations could not have intended a definition of "period of play" that would necessitate an absurd reading of section 4(2). In this regard, the observations of Lord Millet in *R (on the application of Edison Power First Power Ltd) v Central Valuation Officer* [2003] 4 All ER 209 at 238 (referred to by the Court of Appeal in *Hong Leong Bank Bhd v Soh Seow Poh* [2009] 4 SLR(R) 525 at [40] ("*Hong Leong Bank*")) are particularly apposite:

> The courts will presume that Parliament did not intend a statute to have consequences which are objectionable or undesirable; or absurd; or unworkable or impracticable…or anomalous or illogical… the strength of these presumptions depends on the degree to which a particular construction produces an unreasonable result. The more unreasonable result, the less likely it is that Parliament intended it.

35 I add parenthetically, that the Court of Appeal in *Hong Leong Bank* observed at [40] that it has been opined in F A R Bennion, *Bennion on Statutory Interpretation* (LexisNexis, 5th Ed, 2008) at Part XXI that the courts have given a wide meaning to the phrase "absurd results" that goes beyond the plain English meaning of being silly or ridiculous.

36 In addition to the above, the defendant's argument was clearly untenable in the face of the clear words found in the Credit Policy [note: 27]. The relevant part of the Credit Policy is reproduced below as follows: [note: 28]

> Singaporeans are required to maintain a minimum of $100,000 in a deposit account ***prior to*** commencement of play to be eligible for casino credit issuance. ***Once established*** , a Singaporean's status as a premium player or any other person's status as a premium player is valid for a continuous period of 1 year before funds are required to be topped up and replenished [Casino Credit Regulation 4(2)] [*sic*].
>
> [emphasis in bold italics added]

37 The phrase "*once established*" is particularly pertinent. The Credit Policy provides a clear explanation of section 4(2) of the Credit Regulations, that once a patron's status as a premium player

is established by the maintenance of a minimum sum of $100,000 in a deposit account *prior to* his commencement of play (in the present case, this took place on 1 May 2010), his status as a premium player is valid for a continuous period of a year, before funds are required to be topped up again (in addition, the patron ceases to be a premium player if his deposit account is closed (see Credit Regulation s4(3)). It is also pertinent that the phrase "*prior to*" is used, as it clearly reinforces the plain and ordinary meaning of the word "before" in s2 of the CCA. In this regard, it is pertinent that the defendant did not dispute the applicability of the Credit Policy. It was also not disputed that the Credit Policy was submitted to the CRA for consideration, [note: 29] and was subsequently approved by the CRA under s 138(1) of the CCA on 24 April 2010. [note: 30]

The cheque provided by the defendant

38 The defendant pleaded the untenable position that there was total failure of consideration for the cheque he provided. The defendant had all along admitted that credit was indeed extended to him. What the defendant disputes is to the *enforceability* of his debt; he does not dispute that chips (that were perfectly playable) of $250,000 in value was issued to him on credit. Indeed, the defendant went as far as to admit that the cheque was "security for the Plaintiff['s] issuance of credit to the Defendant". [note: 31] The defendant also pleaded that he drew the cheque under the mistaken belief that payment was or will be due and owing to the plaintiff. This purported mistake of law turned out to be no mistake after all, as I have already shown in the above analysis that the defendant was indeed a premium player at the time when credit was extended to him. The real issue with regard to the defendant's cheque was whether the cheque, as security for the issuance of credit, was unenforceable under s 14(2) of the Moneylenders Act. This consequently depended on whether the defendant was a premium player at the time when credit was extended (this has been dealt with above), and whether the plaintiff satisfied the requirements of the relevant controls and procedures approved by the CRA under s 108(7) of the CCA (this issue will be dealt with below at [44]-[47]).

The bona fides of the defence is highly dubious

39 In arriving at my decision to grant conditional leave to defend, I took into consideration the fact that the defendant's legal arguments lacked substance (as shown above at [15]-[38]), and that the *bona fides* of the defence was highly questionable. I considered the fact that from the time when the defendant had been issued with the chips on credit, to around 8 July 2010, the defendant did not deny that he owed the debt to the plaintiff: [note: 32]

> …between 17 June 2010 and 8 July 2010, Mr Pang [the plaintiff's director of international marketing] had made several telephone calls to the Defendant to request for payment:-
>
> a. On 17 June 2010, *the Defendant informed Mr Pang that he would go to the Casino within the few days to pay the outstanding amount in cash*…
>
> …
>
> c. On 28 June 2010, the Defendant informed Mr Pang that he had lost monies to another casino…
>
> d. On 2 July 2010, the Defendant informed Mr Pang that he was unable to pay and *proposed to sell his car to the Plaintiff in settlement of the outstanding amount*.
>
> [emphasis added]

40 The defendant responded specifically to the averments made above; but instead of disputing them, he gave a position that was actually consistent with the averments made by the plaintff: [note: 33]

> At Paragraph 32 of Oncu's Affidavit, the Plaintiff claims that I spoke to a Mr. Pang. I do not know who Mr. Pang is. However, I did receive calls from a representative of the Casino asking for payment of the money I allegedly owed to the Plaintiff. I did mention that I *would try to make payment* but I was unable to.
>
> [emphasis added]

41 The overall picture is therefore as such: the defendant knowingly applied for credit by signing the Credit Agreement (clause 15 expressly states that the applicant is fully aware of the contents of the credit agreement) [note: 34]; he was issued with playable chips on credit; he undertook steps to prepare a cheque, which to his own admission and knowledge, acted as security for the plaintiff's extension of credit; the chips issued on credit were fully utilized, and for about two months thereafter, not only did the defendant not deny that he owed the debt to the plaintiff, he actually informed the plaintiff's representative that he would *try to make payment*. Subsequently however, it curiously dawned upon the defendant that he was not a "premium player" as defined under s 2 of the CCA. Viewed in this light, the defence was at best a contrived afterthought, and at worst, a disingenuous attempt to evade payment of a debt legitimately and properly incurred based on a technical argument of law.

42 Indeed, the *bona fides* of the defence was thrown into greater question when arguments based on potentially illegal situations were made to frame purported issues of social concern. The defendant averred that "a friend" handed a cash sum of $100,000 to him, and he deposited the said sum with the plaintiff. [note: 35] When the defendant withdrew $100,000 worth of chips immediately after the deposit, he returned the chips to his friend. [note: 36] The defendant asserted that he thereafter gambled with his own chips. [note: 37] This was apparently corroborated by Ong Lye Huat ("Ong"), a friend of the defendant. Ong stated that "a friend" of theirs had indeed passed the sum of $100,000 in cash to the defendant for him to deposit with the plaintiff, and that the chips issued to the defendant was handed over to the friend. [note: 38] The defendant's counsel argued that if a patron can become a premium player by simply depositing the sum of $100,000 with the plaintiff, a patron could borrow the sum of $100,000 from a friend, gamble a small amount, and return the chips back for cash to return to the friend. [note: 39] In such situations, the patron would be deemed a premium player and be able to obtain credit from the Casino easily. [note: 40] The defendant's counsel further argued that it may also lead to illegal moneylenders or even bookies lingering at the casino's premises and offering patrons cash to qualify them as a premium player for the reward of a commission. [note: 41]

43 As it was not pleaded that the transfer of chips issued on credit to a friend, or the borrowing of monies to finance the minimum deposit sum, would affect the validity of the Credit Agreement or the enforceability of the defendant's debt (nor was such a connection made in counsel's arguments), the above assertions do not deserve any more attention than that which has already been given, suffice to say that the clearer legal implications for parties involved in such situations would be those of a *criminal* nature. [note: 42]

44 The defendant did, however, raise a triable issue of fact which should properly be left for

determination in trial. According to the defendant, while he was playing at the Casino on 1 May 2010, one of the plaintiff's marketing hosts approached him and offered him to sign up for credit. [note: 43] Although the defendant had apparently rejected the offer, it was alleged that the marketing host told him that there was no harm in signing up for credit as an approved credit line to the defendant will be formed, and the defendant did not have to necessarily use the credit line. [note: 44] At this point in time, one of the Casino staff allegedly placed $250,000 worth of chips in front of the patrons, including the defendant, as one of the patrons' credit line had been approved. [note: 45] It was alleged that the said patron was told that he could immediately use the chips issued on credit. [note: 46] According to the defendant, the sight of the chips together with the sales pitch made by the marketing host "enticed" him to sign up for the plaintiff's credit application. [note: 47]

45 It was unclear whether the alleged unsolicited offer of credit was a general offer, or whether it was that of a specific sum. Although the credit application for $1m was made, the actual amount of credit that was approved was $250,000. As stated in [7] above, under s 108(7) of the CCA, the plaintiff can issue chips on credit to a Singaporean or permanent resident only if he/she is a premium player, and if the plaintiff satisfies the requirements of the relevant controls and procedures approved by the Casino Regulatory Authority ("CRA") under s 138 of the CCA. Section 138 of the CCA states:

> Approved system of controls and procedures to be implemented
>
> 138.—(1) A casino operator shall not conduct operations in the casino unless the Authority has approved in writing of a system of internal controls and administrative and accounting procedures for the casino.
>
> (2) Any such approval may be amended from time to time as the Authority thinks fit.
>
> (3) An approval or amendment of an approval under this section takes effect when notice of it is given in writing to the casino operator concerned, or on a later date specified in the notice.
>
> (4) The casino operator shall ensure that the system approved for the time being under this section for the casino is implemented.
>
> (5) Any casino operator who fails to comply with subsection (1) or (4) shall be liable to disciplinary action.

46 If the plaintiff had indeed granted unsolicited credit to the defendant, it would have contravened section 6 of the Credit Regulations, which provides that:

> 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; or
>
> (b) provide more chips on credit or grant a higher amount of credit to the patron than the amount of chips or credit requested by the patron.

47 In the hearing before me, the defendant's counsel submitted that the alleged unsolicited offer of credit, would contravene section 6 of the Credit Regulations, which would mean that the plaintiff

failed to comply with the requirements of the relevant controls and procedures approved by the Casino Regulatory Authority ("CRA") under s 138 of the CCA. This would in turn mean that the plaintiff could not issue chips on credit under s108(7) of the CCA. The plaintiff, on the other hand, argued that the contravention of section 6 of the Credit Regulations would only attract disciplinary action. [note: 48] I am unable to accept the plaintiff's submission. The preamble of the Credit Regulations clearly states that the said regulations were made by the CRA in exercise of its powers conferred under the CCA; thus bringing the Credit Regulations as a system approved by the CRA. Furthermore, the plaintiff's assertion that it could enforce a debt notwithstanding that the debt had arose from unsolicited credit, [note: 49] was contrary to the spirit of the CCA, which amongst other purposes, was meant to provide safeguards to protect vulnerable persons from casino gaming (Second Reading of the Casino Control Bill (*Singapore Parliamentary Debates*, 14 February 2006, vol 80, col 2313 at [19]), per Deputy Prime Minister and Minister for Home Affairs (Mr Wong Kan Seng)). In these circumstances, if the defendant was indeed, as alleged by him, enticed to apply for credit, it would affect the legitimacy of the very debt which the plaintiff seeks to enforce. It was therefore important that the defendant's allegation that he had been offered unsolicited credit was properly investigated in trial.

[note: 1] Defendant's affidavit of 20 January 2011 at [5].

[note: 2] All dates referred to are calendar dates unless otherwise stated.

[note: 3] A gaming date is taken to be from 6am of that particular day to 5.59am of the next day.

[note: 4] See Exhibit OC-3 of Oncu Cifteler's affidavit of 6 January 2011 at p 27.

[note: 5] See Player Report, Slip ID No 1, in Exhibit OC-5 of Oncu Cifteler's affidavit of 6 January 2011 at p 31.

[note: 6] See Exhibit OC-8 of Oncu Cifteler's affidavit of 6 January 2011 at p 39.

[note: 7] Defence (Amendment No 1) of 9 December 2010 at [3] read with Statement of Claim (Amendment No 1) of 26 November 2010 at [3].

[note: 8] *Ibid* at [3(b)].

[note: 9] Defendant's affidavit of 20 January 2011 at [10(c)].

[note: 10] Defendant's written submission of 24 February 2011 at [10(a)].

[note: 11] *Ibid* at [10(b)].

[note: 12] http://oxforddictionaries.com/

[note: 13] *Ibid*.

[note: 14] This rationale was accepted by the defendant, see defendant's written submissions of 24 February 2011 at [9(b)(ii)].

[note: 15] *Ibid*.

[note: 16] Plaintiff's submissions of 28 February 2011 at [97].

[note: 17] *Ibid* at [98].

[note: 18] Plaintiff's submissions of 28 February 2011 at [90]-[91].

[note: 19] See Exhibit OC-21 of Oncu Cifteler's affidavit of 6 January 2011 at p 93.

[note: 20] See Exhibit OC-8 of Oncu Cifteler's affidavit of 6 January 2011 at p 39.

[note: 21] See defendant's written submissions of 24 February 2011 at [20] – [21].

[note: 22] See Exhibit OC-8 of Oncu Cifteler's affidavit of 6 January 2011 at p 39.

[note: 23] Defence (Amendment No 1) of 9 December 2010 at [4].

[note: 24] Defendant's written submissions of 24 February 2011 at [10(d)].

[note: 25] Defendant's affidavit of 18 January 2011 at [10(e)].

[note: 26] *Ibid* at [11(c) – (d)].

[note: 27] See Exhibit OC-21 of Oncu Cifteler's affidavit of 6 January 2011 at p 93.

[note: 28] See Exhibit OC-21 of Oncu Cifteler's affidavit of 6 January 2011 at p 93.

[note: 29] Plaintiff's submissions of 28 February 2011 at [91].

[note: 30] See Exhibit OC-22 of Oncu Cifteler's affidavit of 6 January 2011 at p 116.

[note: 31] Defendant's written submissions of 24 February 2011 at [14].

[note: 32] Oncu Cifteler's affidavit of 10 January 2011.

[note: 33] Defendant's affidavit of 20 January 2011 at [14].

[note: 34] See Exhibit OC-8 of Oncu Cifteler's affidavit of 6 January 2011 at p 39.

[note: 35] Defendant's affidavit of 20 January 2011 at [7]-[8].

[note: 36] *Ibid*.

[note: 37] *Ibid*.

[note: 38] Ong Lye Huat's affidavit of 21 January 2011 at [4].

[note: 39] Defendant's written submissions of 24 February 2011 at [11(f)].

[note: 40] *Ibid*.

[note: 41] *Ibid* at [33].

[note: 42] In particular, a person who transferred of chips issued on credit to another party may have contravened s9 of the Casino Control (Conduct of Faming) Regulations 2009.

[note: 43] Defendant's affidavit of 20 January 2011 at [10(c)].

[note: 44] *Ibid*.

[note: 45] *Ibid*.

[note: 46] *Ibid*.

[note: 47] *Ibid*.

[note: 48] Plaintiff's submissions of 28 February 2011 at [128].

[note: 49] *Ibid*.

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