Marina Bay Sands Pte Ltd *v* Ong Boon Lin Lester
[2013] SGHC 163

Case Number : Suit No 792 of 2010

Decision Date : 26 August 2013

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Surenthiraraj s/o Sauntharajah @ S. Suressh, Toh Wei Yi, and Sunil Nair (Harry Elias Partnership LLP) for the Plaintiff; Sunil Singh Panoo and Suppiah Krishnamurthi (Dhillon & Partners) for the Defendant.

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

Contract – illegality and public policy – statutory illegality

Statutory Interpretation – definitions

26 August 2013 Judgment reserved.

Lai Siu Chiu J:

Introduction

1 In the present action, Marina Bay Sands Pte Ltd ("the Plaintiff"), which operates a casino ("the casino") at its namesake hotel in Singapore, is claiming that Ong Boon Lin Lester ("the Defendant") failed to repay a debt owed to the Plaintiff, in breach of a credit agreement that the parties had executed. The Plaintiff claims, *inter alia*, the sum of $240,868 ("the Principal Amount") being the principal amount owed by the Defendant together with interest due thereon.

The background

2 The Defendant first patronised the casino on 1 May 2010. On the same day, the Defendant registered to be a member of Paiza (which was the Plaintiff's exclusive club for its valued patrons) and enrolled in the Non-Negotiable Chip Rolling Program ("the NNCR programme"), a programme that allowed patrons to earn commissions when losses were incurred by patrons.

3 On that same day, the Plaintiff opened a deposit account ("the Deposit Account") for the Defendant and the Defendant allegedly deposited cash amounting to $100,000 into the Deposit Account. This was evidenced by the "Front Money Deposit" slip, which was acknowledged by the Defendant. Subsequently, the Defendant withdrew $100,000 in non-negotiable chips ("NN1 Chips"). These were chips that were issued under the NNCR Programme.

4 The Defendant submitted the Plaintiff's Credit Application/Cheque Cashing Application dated 1 May 2010 ("the Credit Application") applying for a credit facility of $1m. He then executed the Credit/Cheque Cashing Agreement ("the Credit Agreement") also dated 1 May 2010 with the Plaintiff. The Credit Agreement sets out the terms and conditions by which the Plaintiff would extend credit to the Defendant. The material terms of the Credit Agreement are set out below:

(a) Pursuant to cl 8 of the Credit Agreement, the Defendant was to pay to the Plaintiff the

amount of the casino chips transferred to him under the Credit Agreement on the Maturity Date ("Maturity Date"), which was 14 days after the date of transfer of the casino chips.

(b) Pursuant to cl 5 of the Credit Agreement, if the Defendant had a deposit account with the Plaintiff, the funds in the deposit account would be used before any credit drawdown was permitted.

(c) Pursuant to cl 5 of the Credit Agreement, the Defendant was to execute any negotiable instrument(s) requested by the Plaintiff.

(d) Pursuant to cl 9 of the Credit Agreement, any amount lent and not paid on the Maturity Date would be subject to interest at the annual rate of 12% beginning from the day after Maturity Date until receipt of the cleared funds.

(e) Pursuant to cl 14 of the Credit Agreement, the Defendant was to provide, as security for the issuance of credit, a personal cheque or other form of acceptable negotiable instrument in the amount of casino chips transferred to the Defendant. The Plaintiff was entitled to apply the cheque towards payment and to complete any portion of the cheque that may be missing or left blank, including but not limited to the amount of the outstanding credit balance, the date of the cheque and the bank or account number.

(f) Pursuant to cl 12 of the Credit Agreement, the Plaintiff was entitled to all costs of collection, including but not limited to reasonable lawyers' fees and court costs.

5 Pursuant to cll 5 and 14 of the Credit Agreement, the Defendant handed to the Plaintiff a cheque issued in the Plaintiff's favour ("the Defendant's Cheque"), which was to serve as security for the Plaintiff's provision of chips on credit to the Defendant.

6 Although the Defendant applied for a credit limit of $1m, the Plaintiff only approved his credit for $250,000. The Defendant withdrew the entire amount of $250,000 of his credit line when the Plaintiff issued 250,000 NN1 Chips to him. The Defendant signed a promissory note dated 3 May 2010, agreeing to pay the Plaintiff $250,000 on demand. The promissory note included an "Interest Grace Period" of 90 days after the maturity date and stated that interest at the annual rate of 12% would be payable by the Defendant beginning on the day after the expiration of the 90 days. The Defendant was unlucky in his gambling sessions between 1 May 2010 (gaming date 30 April 2010) and 14 May 2010 (gaming date 13 May 2010); he lost not only his deposit of $100,000 but also the credit of $250,000 extended to him by the Plaintiff.

7 Under the NNCR Programme, the commission due to the Defendant was calculated to be $9,132 on his losses and this amount was credited to the Defendant's Deposit Account. Pursuant to cl 8 of the Credit Agreement, on the Maturity Date of 16 May 2010, the total sum owing by the Defendant under the Credit Agreement and promissory note amounted to $240,868, after setting off the commission of $9,132.

8 Between 17 June 2010 and 8 July 2010, the Plaintiff's Director of International Marketing made several telephone calls to the Defendant requesting payment. However, the Defendant failed to pay. The Plaintiff then presented the Defendant's Cheque dated 8 July 2010 with the sum payable as $240,868, for payment on 9 July 2010. The Defendant's Cheque was dishonoured and returned on 12 July 2010.

9 By way of letters dated 3 August 2010 and 11 August 2010, the Plaintiff again notified the

Defendant that the Principal Amount was due and requested the Defendant to make payment.

10 On 23 September 2010, the Plaintiff's solicitors sent a letter of demand to the Defendant for the sum of $244,196.08, comprising the Principal Amount, the accrued interest for the period of 15 August 2010 (90 days after the Maturity Date) to 23 September 2010 at the annual rate of 12% pursuant to the terms and conditions of the promissory note, and legal fees incurred by the Plaintiff. The Defendant did not comply with the letter of demand.

11 Consequently, the Plaintiff commenced this suit claiming the Principal Amount and 12% default contractual interest together with costs pursuant to cl 12 of the Credit Agreement.

The applicable law

12 The Defendant's defence to the Plaintiff's claim essentially was that the Plaintiff's extension of credit to the Defendant was unenforceable because the Defendant was not a "premium player" ("Premium Player") according to the Casino Control Act (Cap 33A, 2007 Rev Ed) ("the CCA") and that the Plaintiff did not comply with all the relevant controls and procedures approved by the Casino Regulatory Authority ("the CRA"). It is therefore helpful at this juncture to set out the statutory regime relevant to the granting of credit by the Plaintiff's casino to its patrons.

13 The starting point is that gaming and wagering contracts are null and void by virtue of s 5 of the Civil Law Act (Cap 43, 1999 Rev Ed):

> **Agreement by way of gaming or wagering to be null and void**
>
> **5.**—(1) All contracts or agreements, whether by parol or in writing, by way of gaming or wagering shall be null and void.
>
> …

14 However, s 40 of the CCA provided that s 5 of the Civil Law Act did not apply to certain contracts relating to gaming where such contracts were for transactions permitted under s 108 of the CCA:

> **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]

15 For easy reference, the relevant provisions of s 108 are set out below:

Credit, etc.

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

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

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

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

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

(*e*) except with the approval of the Authority, wholly or partly release or discharge a debt.

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

(a) money;

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

(c) a traveller's cheque.

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

…

(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.

(8) Any —

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

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

shall be —

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

licensed junket promoter; or

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

(9) Any person who —

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

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

[emphasis added]

16 If there was any doubt as to whether s 5 of the Civil Law Act rendered a contract relating to the extension of credit null and void, s 108(1) provided that except where it was allowed by s 108, the extension of credit by a casino operator was prohibited. Section 108(7) provided that a casino operator may provide chips on credit to a person who was not a citizen or permanent resident of Singapore, or a person who was a Premium Player, provided that the casino operator and the person satisfy the requirements of any relevant controls and procedures approved by the CRA.

17 As provided by s 108(9) of the CCA, where a casino operator provided chips on credit to persons other than as permitted under s 108(7)(a) and (b), the casino operator shall be deemed to be a moneylender for the purposes of the Moneylenders Act (Cap 188, 2010 Rev Ed). Section 5(1) of the Moneylenders Act prohibited unlicensed moneylending:

No moneylending except under licence, etc.

5.—(1) No person shall carry on or hold himself out in any way as carrying on the business of moneylending in Singapore, whether as principal or as agent, unless —

(*a*) he is authorised to do so by a licence;

(*b*) he is an excluded moneylender; or

(*c*) he is an exempt moneylender.

18 Section 14(2) of the Moneylenders Act provided that a contract for a loan granted by an unlicensed moneylender would be unenforceable:

(2) Where any contract for a loan has been granted by an unlicensed moneylender, or any guarantee or security has been given for such a loan —

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

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

…

The issues

19 The issues before this court are as follows:

(a) Was the Defendant a Premium Player at the time the Plaintiff provided chips on credit to the Defendant? ("Issue 1")

(b) Had the Plaintiff complied with all the relevant controls and procedures approved by the CRA in providing chips on credit to the Defendant? ("Issue 2")

The Defendant's case

20 The Defendant argued that he did not have a Deposit Account with the Plaintiff and he did not make the $100,000 deposit, contending that the transaction was "merely an exchange of $100,000 for the same value in gambling chips".

21 The Defendant noted that a casino patron was to maintain a deposit account of not less than $100,000 to remain qualified as a Premium Player. Since the Defendant was given $100,000 in chips almost immediately after handing over the sum of $100,000 to the counter at the casino cage, the Defendant argued that he did not maintain a deposit account of $100,000 when the Plaintiff provided chips on credit to him. Moreover, the purpose of the requirement for the $100,000 deposit was to ensure that the patron has the capacity to leave the minimum of $100,000 with the casino.

22 The Defendant argued that if the Plaintiff's interpretation were to be adopted, such a purpose would be defeated as a patron may borrow $100,000 from an illegal moneylender, and withdraw the entire $100,000 in chips or cash once it has been deposited with the Plaintiff casino so that it can be returned to the illegal moneylender. The moneylender would then be able to repeatedly use the same amount of cash to allow other patrons to become Premium Players.

23 The Defendant submitted that the Plaintiff was in breach of the requirement under s 108(7) of the CCA to "satisfy the requirements of any relevant controls and procedures approved by [CRA]" because :

(a) the relevant controls and procedures required the patron to request for a deposit account to be established, and the Defendant did not request to open the Deposit Account; and

(b) the relevant controls and procedures prohibited the Plaintiff from soliciting for credit, and the Plaintiff had solicited and enticed the Defendant to apply for credit.

The Plaintiff's case

24 The Plaintiff contended that the Defendant was a Premium Player at the time the Plaintiff provided him with chips on credit because:

(a) the documentary evidence showed that the Defendant opened a Deposit Account prior to the commencement of play; hence, the Defendant became a Premium Player at that point in time; and

(b) the Defendant's status as a Premium Player continued for a period of one year regardless of the balance in the Deposit Account, unless the Deposit Account was closed during that period. There was no need to maintain a balance of $100,000 in the Deposit Account during the one year

period.

25 The Plaintiff also argued that the Defendant's interpretation of the legislation was unworkable in view of the applicable tax regulations and the relevant controls and procedures approved by the CRA.

26 The Plaintiff asserted it did not fail to comply with all the relevant controls and procedures approved by the CRA in providing chips on credit to the Defendant because:

(a) the documentary evidence established that the Defendant did make a deposit into the Deposit Account; and

(b) the legislation did not prohibit the solicitation of credit applications by the casino operator, but instead, only prohibited the provision of credit without the prior request of the patron.

The decision

Issue 1: Was the Defendant a Premium Player at the time the Plaintiff provided him with chips on credit?

The applicable law

27 Section 2 of the CCA defined a Premium Player and deposit account:

"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;

"deposit account" means an account established under section 108(2);

28 Regulation 3(1) of the Casino Control (Credit) Regulations 2010 (Cap 33A, S 53/2010) ("CCCR") further specified when a patron qualified as a Premium Player:

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.

29 Regulation 4 of the CCCR specified the period of time a patron remained qualified as a Premium Player. It states:

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.

Did the Defendant make a deposit into the Deposit Account?

30 As stated above at [3], the Plaintiff opened the Deposit Account for the Defendant and cash amounting to $100,000 was deposited into the Deposit Account. This is evidenced by the "Front Money Deposit" slip, which was acknowledged by the Defendant. Subsequently, the Defendant withdrew $100,000 in NN1 Chips.

31 The Defendant argued that he did not have a Deposit Account with the Plaintiff and he did not make the $100,000 deposit that was required to qualify him as a Premium Player. Although the Defendant admitted that he "placed the $100,000 cash" with the casino cage, he argued that this transaction was "merely an exchange of $100,000 for the same value in gambling chips".

32 The Defendant's argument is inconsistent with the documentary evidence. When the Defendant handed over $100,000 cash to the Plaintiff, the documentation issued by the Plaintiff, *ie*, the Front Money Deposit Slip, indicated very clearly that the transaction was a "FRONT MONEY DEPOSIT" and the resulting "FRONT MONEY BALANCE" was $100,000. The Front Money Deposit Slip was signed by the Defendant and the Defendant admitted that he was given a copy of this document.

33 The Plaintiff's witness Oncu Cifteler testified that if the transaction at the casino cage was simply one of an exchange of cash for chips of the same value, the patron would not be required to sign documents in the nature of the Front Money Deposit slip or the Front Money Withdrawal slip. Such documents were required to be signed only if the patron was making a deposit to his front money account to withdraw non-negotiable chips.

34 Moreover, cl 1 of the NNCR Programme Agreement provided that:

A minimum initial front money deposit in the amount of SGD50,000 or above is required in order to join the Marina Bay Sands Ptd [*sic*] Ltd ("MBS") Non-Negotiable Chip Rolling ("Program") where Rolling commission will be paid as specified above, subject to these Terms & Conditions.

35 It was recorded at the bottom of the agreement just above the Defendant's signature that the "Initial Front Money" deposited by the Defendant was $100,000 cash. I find that the signing of the NNCR Programme Agreement constituted a request by the Defendant to open the Deposit Account with the Plaintiff so as to make the necessary deposit required for enrolling in the NNCR Programme.

36 After enrolling into that programme, the Defendant made several transactions that confirmed his understanding that a Deposit Account had been opened for him. On 2 May 2010, the Defendant deposited 25,000 NN1 Chips with the Plaintiff. This was evidenced by a Front Money Deposit Slip which indicated very clearly that the transaction was a "FRONT MONEY DEPOSIT" of 25,000 NN1 Chips, and the resulting "FRONT MONEY BALANCE" was $25,000. The Defendant then withdrew cash of $25,000 from his deposit account. This was reflected in a Front Money Withdrawal slip which indicated that the "FRONT MONEY BALANCE" was $0. On 3 May 2010, the Defendant deposited cash of $2,000 in the Deposit Account and the Plaintiff issued 2,000 NN1 Chips to the Defendant. This was again documented by a Front Money Deposit Slip and a Front Money Withdrawal slip. These slips were all signed by the Defendant.

37 The Defendant argued that he was never informed that he was opening a deposit account, and therefore could not have requested to open the account. As I have held above at [35], I found that the signing of the NNCR Programme Agreement constituted a request by the Defendant to open the Deposit Account with the Plaintiff so as to make the necessary deposit required for enrolling in the NNCR Programme. The Defendant, in arguing that he was never informed that he was opening a deposit account, was in substance pleading *non est factum*¸ which is a specific doctrine of mistake pertaining to the situation where the contracting party seeking to set aside the contract pleads that his signature on the contractual document concerned is, in fact, not his signature inasmuch as his mental assent did not accompany the signature actually penned: see in general The Law of Contract in Singapore (Andrew Phang Boon Leong general editor) (Academy Publishing, 2012) at para 10.237–10.245.

38 As a starting point, one is generally bound by one's signature on a contract even if one is unaware of the existence or effect of some particular term in the contract; in this case, cl 1 of the NNCR Programme Agreement and the reference to "Initial Front Money" deposited by the Defendant at the bottom of the agreement: see *L'Estrange v F Graucob Ltd* [1934] 2 KB 394 and *Serangoon Garden Estate Ltd v Marian Chye* [1959] MLJ 113. However, only in very limited circumstances can *non est factum* be pleaded as a defence. As was held in *Oversea-Chinese Banking Corp Ltd v Frankel Motor Pte Ltd and others* [2009] 3 SLR(R) 623 at [25], there are two requirements for *non est factum* to be successfully invoked:

> The doctrine of *non est factum* can only be pleaded where the signer had made a fundamental mistake as to the character or effect of the document. The degree of difference that must exist between the document actually signed and the document it was believed to be has to be 'radical', 'essential', 'fundamental' or 'very substantial'. Ultimately, the question depends on the circumstances of each case.
>
> Negligence or carelessness on the part of the person signing the document excludes the defence of *non est factum*. Similarly, a person who is ignorant of (as opposed to being mistaken about) what he is signing cannot plead *non est factum*.

39 Therefore, for *non est factum* to be raised successfully, there must be a radical difference between what was signed and what was thought to have been signed. Also, there must be no carelessness on the part of the party signing the document.

40 In the present case, I cannot accept that in signing the NNCR Programme Agreement, the Defendant made a fundamental mistake as to its character or effect. It was not disputed that the Defendant intended to enrol in the same, which was a programme which allowed the Defendant to earn commissions when he incurred gambling losses. The Defendant must have known that a payment was required, although he could receive chips of the same value as soon as he made the payment. Hence, the Defendant must have known that some kind of account and record would have been kept by the Plaintiff in order to calculate the commission due to the Defendant under the NNCR Programme, and to record the initial payment.

41 In my view, this understanding of the Defendant would be sufficient in appreciating the character and effect of the NNCR Programme Agreement, and the requirement for a deposit account contained within. From the viewpoint of the Defendant, it would not make any practical difference whether the initial payment he made was characterised as a "deposit" or just payment in exchange for the chips, and whether the payment was deposited into a deposit account – he would still be enrolled in the NNCR Programme to earn commission.

42 In any case, cl 1 in the short one-page agreement clearly made reference to a "minimum initial front money *deposit*". Clause 1 is a prominent clause as it is the main operative clause of the agreement. It provided that a minimum initial front money deposit was required, that the commission would be paid as specified in a table above the clause, and that the terms and conditions in the other clauses would apply. Therefore, even if the Defendant did not realise that he was requesting for a deposit account to be opened so as to make a deposit payment, his carelessness in reading cl 1 disentitles him from pleading *non est factum*.

43 I also note that in the Credit Application signed by the Defendant, there was a declaration that if the Defendant was a citizen or permanent resident of Singapore, his signature attested that he had made a deposit of $100,000 with the Plaintiff:

> If I am a citizen or permanent resident of Singapore, my signature below attests that I have deposited SGD100,000 with Marina Bay Sands.

44 I further note that in the Defendant's affidavit in response to the Plaintiff's application for summary judgment, he admitted to depositing $100,000 with the Plaintiff in order to qualify as a Paiza member. In his affidavit, the Defendant stated that:

> 5. As I recall, soon after the Plaintiff's Casino opened for business, I visited the Casino to gamble. It was during my first few visits to the Plaintiff's Casino that I was told about the Paiza Membership. I was told I had to *deposit the sum of $100,000.00 cash*. I was also told that I would be able to withdraw the full $100,000.00 in chips and start gambling with the chips.
>
> …
>
> 7. My friend had $100,000.00 cash with him and I used the cash to *deposit with the Plaintiff* in order to qualify as a Paiza member. I also signed the Paiza application form.
>
> [emphasis added]

45 I am therefore satisfied that the Defendant was a Premium Player because the Deposit Account was set up for him and he deposited the $100,000 into the Deposit Account.

Did the Defendant remain a Premium Player at the relevant time?

46 The Plaintiff argued that a patron only needed to make an initial deposit of $100,000 into the Deposit Account at some point of time prior to the commencement of play by him in the casino to be a Premium Player, although the deposit account must be "maintained" for the duration of his qualification as a Premium Player. The Plaintiff's reading of Regulation 4 of the CCCR was that a person, upon achieving the status of a Premium Player, remained so qualified unless one of the following happened:

(a) The deposit account was closed during the period of one year.

(b) At the end of one year, the credit balance in the deposit account was no longer at least $100,000.

47 The Defendant on the other hand argued that a patron had to maintain a deposit account of not less than $100,000 throughout to remain qualified as a Premium Player. Since the Defendant was given $100,000 in chips almost immediately after handing the sum of $100,000 to the counter at the casino cage, he asserted that he did not maintain a deposit account of $100,000 on 3 May 2010 when the Plaintiff provided him with chips on credit.

48 I reject the Defendant's arguments for the reasons set out below.

49 Insofar as the Defendant relied on the word "maintains" under s 2 of the CCA to argue that a patron had to maintain a deposit account of not less than $100,000 at all times to remain qualified as a Premium Player, that focus on s 2 alone is misplaced. Section 2 merely stated that a Premium Player was a patron who maintained a deposit account with the casino with at least $100,000 "*before the commencement of play* by him in the casino". This is in contradistinction to maintaining a credit balance of $100,000 during play, or throughout play or after play, by a patron. This is reiterated by Regulation 3, which provided that a patron qualified as a Premium Player when the total amount of money or chips in the patron's deposit account was not less than $100,000, "*before the commencement of play* by him in the casino". In my view, s 2 merely provided that a patron would be a Premium Player the moment he deposited $100,000 into his deposit account with the casino. Section 2 did not provide for the period when a patron remained qualified as a Premium Player, *ie*, when a patron ceased to be a Premium Player, and it did not prescribe a continuous condition of maintaining $100,000 in the deposit account in order to remain a Premium Player.

50 Instead, the period specifying when a patron remained qualified as a Premium Player and when a patron ceased being a Premium Player was set out in Regulation 4 of the CCCR. Regulation 4 of the CCCR that was applicable at the relevant time is reproduced here:

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.

51 Regulation 4(1) of the CCCR clearly provided that a patron remained qualified as a Premium Player if there was at least $100,000 in his deposit account, upon the expiry of a "period of play" and before the subsequent commencement of a "period of play" by him in the casino. However, "period of play" was not defined in CCA and the CCCR.

52 The proposition that Regulations 3 and 4 of the CCCR defined the period when a patron remained qualified as a Premium Player is supported by Regulation 3 of Casino Control (Casino Tax) Regulations 2010 (Cap 33A, S 59/2010), which stipulated for different tax rates to be applied for the gross gaming revenue for Premium Player and non-premium players:

> **When premium player tax rate applies**
>
> **3.** For the purpose of ascertaining the applicable tax rate in respect of any gross gaming revenue from a player —
>
> (a) the premium player tax rate shall apply from the time the player qualifies as a premium player ascertained in accordance with regulation 3 of the Casino Control (Credit) Regulations 2010 (G.N. No. S 53/2010); and
>
> (b) the non-premium player tax rate shall apply from the time the player ceases to be a premium player ascertained in accordance with regulation 4 of the Casino Control (Credit) Regulations 2010.

53 Implicit in the Defendant's argument is that a "period of play" in Regulation 4(1) expired when a patron stopped playing at a table, or stopped playing for the day and left the casino. In the same vein, a new "period of play" commenced when a patron started playing at a new table, or returned to the casino the following day. The significance of accepting such an argument is that when a patron returned to the casino the following day and commenced play at a table, he would not be considered a Premium Player if he did not have at least $100,000 in his deposit account at that time, even though he had at least $100,000 in his deposit account the previous day to qualify as a Premium Player then. In other words, implicit in the Defendant's argument is that the Premium Player status lasted only for a particular episode of play immediately after the deposit of $100,000. Once that episode of play ended, the Premium Player status ended unless the patron still had $100,000 in his deposit account before the subsequent episode of play.

54 I reject such an argument. The "period of play" in Regulation 4(1) of the CCCR was not specifically defined anywhere else outside of Regulation 4 in the Casino Control (Credit) Regulations 2010. Reading Regulation 4 holistically, it is my view that instead of leaving "period of play" undefined, "period of play" was defined within Regulations 4(2) and 4(3), which prescribed that the "period of play" shall be a continuous period of one year, unless a patron's deposit account was closed. In any case, it is clear that the regulations contemplated that a "period of play" could last for a continuous period of one year, if not more. The Defendant's interpretation that a "period of play" expired when a patron stopped playing at a table, or stopped playing for the day and left the casino, would not be consistent with what the regulations contemplated. Therefore, I find that once a patron qualified as a Premium Player by depositing $100,000 into his deposit account with the casino, he remained a Premium Player for a period of one year thereafter, unless he closed his deposit account, regardless of whether the amount remaining in his deposit account fell below $100,000.

55 The Defendant also argued that the purpose of the requirement for the $100,000 deposit was to ensure that a patron has the capacity to leave the minimum of $100,000 with the casino. According to the Defendant, if the Plaintiff's interpretation was adopted, such a purpose would be

defeated as a patron may borrow the requisite $100,000 from an illegal moneylender and withdraw the entire $100,000 in chips or cash once it has been deposited with the Plaintiff casino so that it can be returned to the illegal moneylender. The moneylender would then be able to recycle the same amount of cash to allow other patrons to become Premium Players.

56 I disagree. Although the requirement for the minimum deposit of $100,000 is a measure of the financial wherewithal of a patron for credit to be extended to him, it would not be unreasonable for such financial wherewithal to be re-established one year after the commencement of play, to serve as an appropriate check on the patron. Moreover, the concerns of the Defendant have already been addressed by the law. Section 14 of the Moneylenders Act prohibits unlicensed moneylending to patrons while Regulation 9 of the Casino Control (Conduct of Gaming) Regulations 2009 (Cap 33A, S 594/2009) prohibits the use of chips for a purpose other than for the playing of games, or the giving of tips to employees of the casino.

57 Therefore, I find that the Defendant remained a Premium Player when credit was extended to him by the Plaintiff even though the Defendant did not then have $100,000 in his Deposit Account.

58 For completeness, I should mention that the CCA has since been amended (in 2012). The definition of "premium player" under s 2 of the CCA now reads as follows:

> "premium player" means a patron of a casino who opens a deposit account with the casino operator with a credit balance of not less than $100,000, where —
>
> (*a*) the deposit is in such form as may be prescribed;
>
> (*b*) the period during which the credit balance in the deposit account is below $100,000 does not exceed such period as may be prescribed; and
>
> (*c*) the deposit account fulfils such other conditions as may be prescribed;

59 Correspondingly, the CCCR were amended earlier this year in 2013, and now include a more detailed set of rules to determine the duration a patron remains qualified as a Premium Player:

> **Form of deposit by premium player**
>
> **2A.**—(1) For the purposes of paragraph (*a*) of the definition of "premium player" in section 2(1) of the Act, the deposit shall be in one or more of the following forms:
>
> (*a*) money received by a casino operator from a 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;
>
> …
>
> **Period of credit balance to remain premium player**
>
> **2B.** For the purposes of paragraph (*b*) of the definition of "premium player" in section 2(1) of the Act, the period during which the credit balance in a deposit account is below $100,000 must not exceed a continuous period of 12 months.
>
> **When patron qualifies as premium player**

3. A patron of a casino qualifies as a premium player of the casino when he opens a deposit account with the casino operator of that casino and provides the casino operator with a deposit in accordance with regulation 2A which satisfies the minimum balance.

When patron remains or ceases to be premium player

4.—(1) After a patron of a casino first qualifies as a premium player of the casino in accordance with regulation 3, the patron remains as a premium player of the casino for an initial period of 12 months thereafter, unless otherwise expressly provided in this regulation.

(2) In any case where after a patron of a casino qualifies as a premium player of the casino in accordance with regulation 3 —

(*a*) the credit balance in the deposit account opened by the patron with the casino operator of that casino falls below $100,000;

(*b*) the period during which the credit balance in the deposit account is below $100,000 does not exceed the period specified in regulation 2B; and

(*c*) one or more additional deposits in accordance with regulation 2A are made by or on behalf of the patron into the patron's deposit account,

the patron shall remain a premium player of that casino for a period of 12 months starting from the date the credit balance in the deposit account reaches $100,000 or more.

(3) Where —

(*a*) a patron of a casino who is neither a citizen of Singapore nor a permanent resident of Singapore is a premium player of the casino; and

(*b*) the patron subsequently becomes a citizen of Singapore or a permanent resident of Singapore,

the patron shall cease to be a premium player of the casino upon his becoming a citizen of Singapore or a permanent resident of Singapore, unless, upon becoming such a citizen or permanent resident, he provides the casino operator with a new deposit in one or more of the forms in regulation 2A(1)(*a*) to (*d*) which satisfies the minimum balance, and he shall remain a premium player of the casino for a period of 12 months starting from the date he so provides the casino operator of that casino with the new deposit.

(4) Where the credit balance in the deposit account of a patron of a casino who is a premium player of the casino is $100,000 or more on —

(*a*) the next anniversary of the date he first qualifies to be a premium player referred to in paragraph (1) if applicable to the patron;

(*b*) the next anniversary of the date referred to in paragraph (2) or (3) if applicable to the patron; or

(*c*) the date immediately after the end of the further period referred to in this paragraph if applicable to the patron,

that patron shall remain a premium player of the casino for a further period of 12 months starting on that date, and so on.

(5) A patron ceases to qualify as a premium player if he does not retain his qualification as a premium player in accordance with paragraph (1), (2), (3) or (4), or upon the closure of the patron's deposit account with the casino operator, whichever is earlier.

(6) Nothing in this regulation prevents a patron who is a premium player of a casino from applying to close his deposit account with the casino, and that patron shall cease to be a premium player of that casino immediately upon the closing of such deposit account.

Illustration 1

Patron A makes a deposit of $100,000 into his deposit account with a casino operator on 2nd January 2012. Patron A qualifies as a premium player with the casino operator on 2nd January 2012. Patron A draws down $100,000 from his deposit account on 4th January 2012 to play at the casino. On 4th January 2012, the deposit balance is recorded as $0. Patron A continues to retain his qualification as a premium player, which will cease on 1st January 2013 or upon the closure of Patron A's account with the casino operator, whichever is the earlier.

Illustration 2A

Patron B makes a deposit of $100,000 into his deposit account with a casino operator on 2nd January 2012. Patron B qualifies as a premium player with the casino operator on 2nd January 2012. Patron B draws down $20,000 from his deposit account on 4th January 2012 to play at the casino. Patron B further deposits $30,000 into his deposit account with the casino operator on 6th January 2012, bringing his deposit balance to $110,000. Patron B re-qualifies as a premium player on 6th January 2012. Patron B's qualification as a premium player status will cease on 5th January 2013 or upon the closure of Patron B's deposit account with the casino operator, whichever is the earlier.

Illustration 2B

Patron B does not carry out further transactions in respect of his deposit account after 6th January 2012. The balance in his deposit account remains at $110,000 on 5th January 2013. He does not close his deposit account with the casino operator on 6th January 2013 and still has $110,000 in his deposit account on 6th January 2013. Patron B re-qualifies as a premium player on 6th January 2013 without having to furnish another $100,000, as he already has not less than $100,000 in his deposit account on 6th January 2013.

60 These amended provisions have brought much clarity to the regulatory regime governing the granting of credit by casino operators to patrons. Nonetheless, I should mention that in reaching my decision for the present case, I was careful not to be influenced by the amended provisions. I quoted the amended provisions only for completeness. The previous statutory provisions before the amendment applied to the present case, and I was guided by the intention of Parliament, as expressed through the words of the statute and regulations which existed at the time credit was extended by the Plaintiff to the Defendant.

Issue 2: Did the Plaintiff comply with all the relevant controls and procedures approved by the CRA, in providing chips on credit to the Defendant?

61 The Defendant argued that the Plaintiff was in breach of s 108(7) of the CCA, in particular, that the Plaintiff had failed to "satisfy the requirements of any relevant controls and procedures approved by [CRA]" because :

(a) the relevant controls and procedures required the patron to request for a deposit account to be established, and the Defendant did not request to open the Deposit Account; and

(b) the relevant controls and procedures prohibited the Plaintiff from soliciting for credit, and the Plaintiff had solicited and enticed the Defendant to apply for credit.

The Deposit Account

62 One of the Plaintiff's Guiding Principles provided for the requirement of the patron's request for the establishment of a deposit account:

Establishment of Front Money Account (ICC Definition: Deposit Account)

The front money account is established at the Casino Cage upon patron's request. When a front money account is established, the system will automatically assign a unique membership account number to the patron and the patron is automatically a member of the Casino. To establish an account, the following information at the minimum will be recorded by a Cage Cashier:

…

63 As I have held above at [32]–[36], I am satisfied that the documentary evidence established that the Defendant did make a deposit into the Deposit Account. In my view, the Defendant must have known, or ought to be taken to know, that he was requesting the establishment of the Deposit Account when he signed the NNCR Programme Agreement which stated at cl 1 that a "minimum initial front money deposit in the amount of SGD50,000" was required to join the NNCR Programme (see above at [34]). Moreover, it was recorded in the document that the "Initial Front Money" deposited by the Defendant was $100,000 cash. Therefore, I find that in signing the NNCR Programme Agreement, the Defendant requested to open the Deposit Account, in line with the Plaintiff's Guiding Principles that the patron's request for the establishment of a deposit account was required.

Unsolicited credit

64 Regulation 6 of the CCCR prohibited casino operators like the Plaintiff from granting unsolicited credit to patron; it stated:

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.

65 In my view, Regulation 6 and the corresponding Guiding Principle did not prohibit the solicitation of credit applications by a casino operator. It only prohibited the provision of credit without the prior

request of the patron. In other words, a patron had to request for credit to be provided by the casino operator before such credit may be provided and the casino operator could not unilaterally provide credit without such a prior application. Therefore, the Defendant's allegation that the Plaintiff's staff approached and encouraged him to apply for credit is not relevant.

66 In the present case, the Defendant had in fact made a prior request for credit in the form of submitting a written application for credit of $1m before chips on credit were provided to him on 3 May 2010. Therefore, the Plaintiff had complied with Regulation 6 and the corresponding Guiding Principle.

67 I hold that the Plaintiff did comply with all the relevant controls and procedures approved by the CRA in providing chips on credit to the Defendant.

Conclusion

68 Consequently, I award judgment to the Plaintiff on its claim as follows:

(a) $240,868.00 being the Principal Amount owed by the Defendant;

(b) default interest on the Principal Amount of $240,868.00 at the contractual rate of 12% per annum calculated from 15 August 2010 (see [10]) until the date of receipt of full payment by the Plaintiff; and

(c) costs to be taxed on a standard basis unless otherwise agreed.

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