LOTTERY TICKET AND ILLEGALITY

Mui Wing Shui v. *Ngeow Joo Chong* [1]

The plaintiff bought a Singapore Turf Club Sweepstake (hereinafter referred to as "ticket") from the defendant who was *not an authorized agent* of the Singapore Turf Club. When the ticket won the first prize, the plaintiff requested the defendant to collect the money for him. The defendant accordingly collected the money from the Turf Club and handed the plaintiff part of it retaining a portion for himself. The plaintiff thereupon brought an action for money had and received claiming the balance of the prize money. The defendant argued, *inter alia,* that as the plaintiff's claim arose out of the sale of a lottery ticket in an illegal and void public lottery, the action could not succeed.

Winslow J. held that as the plaintiff had bought the ticket from the defendant who was an unauthorized agent of the Turf Club, the transaction was illegal. He accordingly dismissed the plaintiff's claim.

Section 23 of the Common Gaming Houses Ordinance [2] provides:—

> The Yang di-Pertuan Negara may by notification in the *Gazette,* either generally or in particular cases, exempt from all or any of the provisions of this Ordinance the members and officers of any racing club or association in respect of any public lottery or sweepstake held, promoted, organized, administered or *operated by it* or *its duly authorized officers or agents* at places subject to the control or supervision of any one or more of the officers of such racing club or association.

Section 24 provides:

> Notwithstanding the prohibitions and penalties prescribed and imposed in this Ordinance in relation to a public lottery it shall not be an offence for any person to buy a ticket or chance or take part in any public lottery held, promoted, administered or operated by a racing club or association which has been exempted under the provisions of section 23 of this Ordinance.

22. [1954] 1 All E.R. 578.

23. [1955] 3 All E.R. 123.

1. (1964) 30 M.L.J. 458.

2. No. 2 of 1961.

These sections are identical with sections 22 & 23 respectively of the Common Gaming Houses Ordinance[3] which the Ordinance of 1961 repealed. An exemption was granted to members and officers of the Singapore Turf Club under section 22 of the Common Gaming Houses Ordinance on 2nd June, 1960[4] upon the following terms:

> In exercise of the powers conferred by section 22 of the Common Gaming Houses Ordinance, the Yang di-Pertuan Negara hereby exempts generally from the provisions of the said Ordinance the members and officers of the Singapore Turf Club in respect of any public lottery or sweepstake held, promoted, organized, administered or operated by it or its *duly authorized officers or agents*.[5]

In the instant case, the defendant had bought the ticket (which was subsequently sold to the plaintiff) from an authorized agent. However, he himself was not an authorized agent. Hence, he could not seek protection under sections 23 & 24 of the Ordinance. Accordingly, the learned Judge held that the transaction was illegal. Such a conclusion seems to lead to an absurdity. As put by the learned Judge:[6]

> But if he were to buy tickets from the club direct or from one of its authorized agents and then sell them indiscriminately all over Singapore . . . Such a person would, in fact, be operating a separate and distinct public lottery on his own which is beyond the protection of the exemption conferred by sections 23 & 24.
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> This may sound alarming . . .

Carried to its logical conclusion, it would mean that if *A* buys two tickets direct from the Turf Club or from one of its authorized agents and sells one of the tickets to *B,* he is deemed to operate an illegal lottery under the Ordinance. It is difficult to see what is the underlying policy. For, unlike the position under the former law where sale of Turf Club tickets was only confined to its members, sale of tickets has been extended to the public as a whole. As such, *B* is not a class who would be prohibited from buying the ticket. Hence, there does not seem to be any ground of public policy to render the sale illegal.

Be this as it may, the canon of construction which states that if the language of a statute is clear effect must be given to it even though it leads to an absurdity, would seem to justify such a conclusion.

However, whether the illegal transaction should affect the plaintiff's claim for the balance of the prize money poses interesting questions. Was the defendant an agent of the plaintiff when he asked him to collect the prize-money? Does the maxim *ex turpi causa non oritur actio* apply in this case?

It would be remembered that the plaintiff handed the defendant the ticket *only for the purpose of collecting the prize-money.* If the defendant was the agent of the plaintiff, then he would be able to succeed in a claim for money had and received. The learned Judge however held that no agency relationship arose. He stated: [7]

> He bought the ticket outright from the defendant and the relationship between them was not one of principal and agent but that of two principals dealing with one another on a void as well as illegal contract.

With respect, it is difficult to see how the fact that the plaintiff had bought the ticket from the defendant could affect the question of the recovery of the prize-money. The plaintiff could have collected the prize-money himself or, if he had asked another person to collect it for him, no doubt that person would have been his agent. Why should it make any difference that the defendant happened to be the one who sold the ticket to the plaintiff?

3. Revised Laws, 1955, Cap. 114.
4. *Gazette* Notification No. S. 169, (2nd June, 1960).
5. Italics supplied.
6. (1964) 30 M.L.J. at p. 462.
7. *Ibid.*, at p. 463.

The learned Judge based his conclusion that there was no agency relationship on an analogy drawn from the cases decided under the former law where sale of Turf Club lotteries was only to be confined to its members. Thus, in *G. Benjamin* v. *M. Esmailjee*[8] Cussen J. held that: [9]

> The plaintiff and defendant are parties to an agreement and contract which is illegal and void. The plaintiff is the winner of a prize in the separate lottery carried on by the defendant, his cause of action is based upon the illegal and void contract between him and the defendant in which contract — in the separate and distinct lottery — they were principals.
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> No question arises here of principal and agent as the lottery in question is the separate distinct lottery organised by the defendant.
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> I am of opinoin that the defendant must succeed on this question of law I find the plaintiff has no cause of action.

That case concerned a sale of a ticket by a member of the Turf Club to a non-member such sale being prohibited under the former law. The plaintiff therefore belonged to a class prohibited from buying the lottery ticket. A distinction was made between "public" and "non-public" lotteries. The *rationale* was stated by Thomas C.J. in *Kader Batch* v. *Public Prosecutor*: [10]

> ... a lottery which may be in the first instance comparatively harmless can be extended to an almost unlimited extent by its user for sale of tickets to the public . . . once recognized, there would be no limit to the activities of those who provide the tickets.

Such being the case, the plaintiff in *Benjamin's* case was prohibited from buying, and hence from claiming the prize-money except through the member from whom he had bought the ticket. That being the case, he would have had to rely on the illegal transaction to which the Court would not lend its aid.

Since under the present law, sale of Turf Club lottery tickets is no longer confined to its members, the plaintiff could not have been prohibited from buying the ticket. He could therefore have claimed the prize-money directly from the Turf Club. The fact that he had bought the ticket from an unauthorized agent should not have prevented him from succeeding in his present action. For, it is submitted, he could rely on his independent title to the lottery (since the prize-money represented the lottery) and need not have founded his claim on the illegal transaction.

In *Singh* v. *Ali*[11] (which unfortunately was not cited in the instant case), Lord Denning, delivering the opinion of the Privy Council said: [12]

> When two persons agree together in a conspiracy to effect a fraudulent or illegal purpose — and one of them transfers property to the other in pursuance of the conspiracy — then, as soon as the contract is executed and the fraudulent or illegal purpose is achieved, the property (be it absolute or special) which has been transferred by the one to the other remains vested in the transferee, notwithstanding its illegal origin . . . And the transferee, having obtained the property, can assert his title to it against all the world, not because he has any merit of his own, but because there is no one who can assert a better title to it. The Court does not confiscate the property because of the illegality, — it has no power to do so — so it says, in the words of Lord Eldon: "Let the estate lie where it falls."

In the instant case let it be supposed that the defendant had not collected the prize-money and that the plaintiff had sought to recover the ticket from the defendant. No doubt, an action for conversion would lie against the defendant because the

8. (1936) 5 M.L.J. 251.

9. *Ibid.*

10. (1935) 4 M.L.J. 252.

11. [1960] A.C. 167. See also *Palaniappan Chettiar* v. *Arunasalam Chettier* (1962) 28 M.L.J. 143 (P.C.).

12. *Ibid.*, at p. 176. In *Singh's* case there was fraud on the part of the parties to effect an illegal purpose in contravention of a statute. In the instant case, the element of fraud was absent. If property passed in the former case, it would a *fortiori* pass in the latter.

plaintiff was the owner of the ticket and because the defendant could not have asserted a better title than the plaintiff.[13] Therefore, by parity of reasoning the plaintiff should have been able to recover the balance of the prize-money which represented the title to the ticket. In other words, he need not rely on the original illegal transaction.

Unfortunately, the learned Judge applied the principle *ex turpi causa non oritur actio.* After quoting a *dictum* from Lord Mansfield C.J. in *Holman* v. *Johnson*[14] that "if the cause of action appears to arise *ex turpi causa,* or the transgression of a positive law of this country, there the court says he has no right to be satisfied," the learned Judge said: [15]

> All that requires to be proved before the court refuses aid to the plaintiff therefore is that the cause of action should appear to arise out of the transfression of the law.

It is respectfully submitted that the principle *ex turpi causa non oritur actio* has no application in the instant case for the reason that the plaintiff did not found his claim on an illegal transaction, but rather on an independent claim of title to the ticket.

K. L. KOH.

13. A sweepstake or lottery ticket is a *chose in action*: *Jones* v. *Carter* (1845) 8 Q.B. 134. A *chose in action* can be converted: *Plant* v. *Cotteril* (1860) 5 H. & N. 430 (deed); *M'Leod* v. *M'Ghie* (1841) 2 Man & G. 326 (guarantee) : *Watson* v. *McLean* (1858) El. Bl. & El. 75 (insurance policy).

14. (1775) 1 Cowp, 343.

15. (1964) 30 M.L.J. 458 at p. 463.