SUPREME COURT OF QUEENSLAND

CITATION:	*The Star Entertainment Qld Limited v Yew Choy Wong* [2021] QSC 67
PARTIES:	**THE STAR ENTERTAINMENT QLD LIMITED** ACN 010 741 045 (plaintiff) **v** **YEW CHOY WONG** (defendant)
FILE NO/S:	BS1909 of 2020
DIVISION:	Trial Division
PROCEEDING:	Application in a proceeding
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	31 March 2021
DELIVERED AT:	Brisbane
HEARING DATE:	22 February 2021
JUDGE:	Bradley J
ORDER:	**The order of the court is that:** **1. The defendant's application filed 31 August 2020 is dismissed.** **2. The parties are to file and serve written submissions on the costs of the application, not exceeding five pages, within 14 days.**
CATCHWORDS:	PROCEDURE – STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY – GENERALLY – where the defendant resides and has been served outside Australia – where the defendant seeks an order that the proceeding be dismissed or stayed or service be set aside pursuant to r 127 of the *Uniform Civil Procedure Rules* 1999 (Qld) – whether the claim has insufficient prospects of success to warrant putting the defendant to the time, expense and trouble of defending it PRIVATE INTERNATIONAL LAW – SERVICE OUT OF JURISDICTION – GENERALLY – where the plaintiff commenced proceedings in Singapore against the defendant in respect of the same damages claimed in this proceeding – where the Singapore action was dismissed by reason of a statutory bar – whether in light of the Singapore action the present proceeding is vexatious or oppressive

ESTOPPEL – ESTOPPEL BY JUDGMENT – RES JUDICATA OR CAUSE OF ACTION ESTOPPEL – GENERALLY – whether the plaintiff's claim merged in the Order of the Singapore court – whether the decision of the Singapore court was on the merits – whether the decision determined a question raised in this proceeding – where the decision was limited to determining that the plaintiff could not pursue the rights it asserts in Singapore due to statutory bar

PROCEDURE – STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY – INHERENT AND GENERAL STATUTORY POWERS – TO PREVENT ABUSE OF PROCESS – ATTEMPTS TO RELITIGATE – where the plaintiff discontinued proceedings in this court against the defendant before the defendant filed a defence – where the plaintiff's proceedings in Singapore against the defendant were dismissed – whether the present proceeding is an abuse of process – whether the present proceeding is unjustifiably oppressive – whether the present proceeding would bring the administration of justice into disrepute

Casino Control Act 1982 (Qld) part 3, part 8 division 2
Racing Integrity Act 2016 (Qld) s 255, s 256
Uniform Civil Procedure Rules 1999 (Qld), r 127(2)(c)

Agar v Hyde (2000) 201 CLR 552; [2000] HCA 41, applied
Azzi v Fox Fire Security System LLC [2020] NSWSC 331, cited
Bank of Tokyo Ltd v Karoon [1987] AC 45, cited
Batistatos v Roads and Traffic Authority (NSW) (2006) 226 CLR 256; [2006] HCA 27, cited
Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1975] AC 591, cited
Clayton v Bant (2020) 95 ALJR 34; [2020] HCA 44, followed
CSR Ltd v Cigna Insurance Australia Ltd (1997) 189 CLR 345; [1997] HCA 33, followed
DSV Silo-und Verwaltungsgesellschaft mbH v Owners of The Sennar (No 2) [1985] 1 WLR 490, cited
Hamilton v Oades (1989) 166 CLR 486, cited
Henry v Henry (1996) 185 CLR 571, cited
Jenks v Turpin (1884) 13 QBD 505, cited
Michael Wilson & Partners Ltd v Nicholls (2011) 244 CLR 427; [2011] HCA 48, followed
Oceanic Sun Line Special Shipping Co Inc v Fay (1988) 165 CLR 197, cited
Pentis & Pentis v Honianakis [1948] St R Qd 237
Re Treadtel International Pty Ltd (2014) 104 ACSR 1;

[2014] NSWSC 1406, followed
Regie National des Usines Renault SA & Anor v Zhang (2002) 210 CLR 491, cited
Rogers v Legal Services Commission of South Australia (1995) 64 SASR 572, followed
Rogers v R (1994) 181 CLR 251; [1994] HCA 42, cited
Rogers v Roche (No 1) [2017] 2 Qd R 306; [2016] QCA 340, applied
The Star Entertainment QLD Ltd v Wong Yew Choy and another matter [2020] SGHC(I) 15, cited
Telesto Investments v UBS AG (2013) 94 ACSR 29;[2013] NSWSC 503, distinguished
Tomlinson v Ramsey Food Processing Pty Ltd (2015) 256 CLR 507; [2015] HCA 28, followed
Uber Technologies Inc v Andrianakis (2020) 61 VR 580; [2020] VSCA 186, followed
UBS AG v Tyne (2018) 265 CLR 77; [2018] HCA 45, distinguished
Voth v Manildra Flour Mills Pty Ltd (1990) 171 CLR 538; [1990] HCA 55, followed
Willoughby v Clayton Utz (No 2) (2009) 40 WAR 98; [2009] WASCA 29, followed

COUNSEL: J K McKenna QC with F Lubett of counsel for the plaintiff
P L O'Shea QC with C Johnstone of counsel for the defendant

SOLICITORS: King & Wood Mallesons for the plaintiff
Russells for the defendant

[1] The plaintiff (**Star**) claims about $43 million from the defendant (**Dr Wong**) as damages for breach of a cheque cashing facility agreement (**CCFA**) or the same amount as liquidated damages for dishonouring a cheque.[1]

[2] Dr Wong has applied for an order setting aside service of Star's claim and statement of claim on the ground that the claim has insufficient prospects of success to warrant putting Dr Wong to the time, expense and trouble of defending. Alternatively, Dr Wong seeks an order dismissing or staying the proceeding for the same reason. Dr Wong seeks this relief pursuant to r 127 of the *Uniform Civil Procedure Rules 1999 (Qld) (***UCPR**), relying on paragraph (2)(c).[2]

[3] Dr Wong contends any defence he may have to Star's claim is immaterial to the outcome of this application. For the purposes of the application, Dr Wong submits

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1 This alternative claim is made pursuant to section 76 of the *Cheques Act* 1986 (Cth).

2 In the application filed on 31 August 2020, Dr Wong also sought relief pursuant to UCPR r 16. That part of the application was not pressed at the hearing.

the court may assume Star could prove the facts relied on for its pleaded case at a trial. These reasons proceed on that basis.

Background to Star's claim

[4] Dr Wong is a resident of Singapore. In July 2018, he travelled to The Star Gold Coast. It is a casino operated by Star in Queensland with a licence issued under part 3 of the *Casino Control Act* 1982 (Qld) (**CCA**).

[5] Dr Wong attended the casino as a participant in a special junket agreement under part 8, division 2 of the CCA. Kheng How Chan was the promoter of the special junket agreement. Each of Dr Wong and Mr Chan held an account with Star into which he could deposit money to purchase gaming chips.

[6] On about 10 July 2018, Dr Wong applied in writing for a cheque cashing facility (**CCF**) to allow him to cash cheques with Star to a total limit of $40 million. In the application, Dr Wong identified three similar facilities with other casinos.[3] Dr Wong also signed an authority form authorising Mr Chan to operate the CCF on his behalf – including by signing cheques on his behalf or in his name as authorised representative. Dr Wong provided Star with a cheque for SGD $41,792,000, which was equal to $40 million.[4] It was drawn on his account with a Singapore branch of the Oversea-Chinese Banking Corporation, Limited (**OCBC Bank**).

[7] On 26 July 2018, Dr Wong and Star signed the CCFA. The promises made by Dr Wong in the CCFA included these:

> "4. I agree that the CCF & any cheques presented under the CCF will be subject to the laws in force in Queensland, Australia & I submit to the jurisdiction of the Courts of that State. In any proceedings under the CCF or in relation to any cheque presented under the CCF I expressly waive any right to object to any proceedings being brought in any Court of competent jurisdiction. …
>
> 5. I agree that any deposit amounts in my name & funds standing to their credit will be subject to laws in force in Queensland, Australia & I submit to the jurisdiction of the Courts of that State in respect of them.
>
> 6. I agree to indemnify The Star for all reasonable losses, liabilities & costs including, but not limited to, reasonable legal costs incurred by The Star on a solicitor & own client basis, in relation to the enforcement of any rights under the CCF or in relation to my deposit accounts or in relation to the proceedings to recover monies owing by me to The Star as the result of a cheque being dishonoured."

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3 Solitaire Resort & Casino (Manila) HK$80 million, Sands Macau HK$50 million, and City of Dreams (Macau) HK$50 million.

4 This cheque may have been signed by Mr Chan, but Dr Wong takes no issue with Star's claim on that basis in the present application.

[8] That day, Star cashed Dr Wong's cheque and provided him with $40 million worth of purchase vouchers. Dr Wong used these to buy gaming chips and played baccarat at the casino.

[9] Hawkins J once described baccarat in these terms:

> "It is a game of cards. It is a game of chance; and though, as in most other things, experience and judgment may make one player or banker more successful than another, it would be a perversion of words to say it was in any sense a game of mere skill."[5]

[10] So, it is no reflection on Dr Wong's skill that within three days it appears he had lost about $40 million and was seeking additional gaming chips to continue playing. There was no evidence of Dr Wong's prior experience at baccarat. It is unnecessary to make any observation on his judgment.

[11] On 29 July 2018, Dr Wong requested a $10 million increase in the limit of the CCF to $50 million. Star agreed. On that day, Star cashed another cheque drawn on Dr Wong's account at the OCBC Bank. This was for SGD $10,448,000, which was equal to $10 million. Star issued additional purchase vouchers in that sum. These were used to buy another $10 million of gaming chips.

[12] There was a third cheque signed by Dr Wong. It was undated and blank as to the payee and amount. Like the other two cheques, it was drawn on his account at the OCBC Bank. It is referred to as the **replacement cheque**.

[13] In written submissions for Dr Wong, the replacement cheque was said to have been "provided as security for any gambling debts incurred by him whilst a guest of Star in Australia." According to Star, the replacement cheque was provided in about May 2017 to The Star Sydney, a related corporation, and Star was authorised to use it.

[14] The replacement cheque appears to have been provided for convenience. Star could complete it by inserting any net amount owing by Dr Wong at the end of his visit to the casino. This was referred to in clause 7 of the terms and conditions of the CCFA, where Dr Wong promised:

> "7. If I provide a replacement cheque to The Star with the amount & date incomplete, I authorise The Star to complete details on that cheque in an amount equal to amounts outstanding under my CCF on settlement of any relevant program & to date the cheque on the date of banking either required by law or as otherwise agreed between me and The Star."

[15] Dr Wong was at the casino for about seven days. He ended his visit on about 2 August 2018. By then, Star says, he had incurred a net debt to Star of $43,209,853.34. Star calculated this figure by deducting three amounts from $50 million in purchase vouchers issued to Dr Wong: a balance of $2,147,760 left in his account with the casino; a rebate of $4,220,351.50 under the special junket

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5 *Jenks v Turpin* (1884) 13 QBD 505 at 524.

agreement; and a further sum of $422,035.16 as an allowance for expenses Dr Wong incurred in staying at the casino.

[16] On 7 September 2018, Star dated and completed the replacement cheque, inserting the amount of SGD $45,145,654.64 to be paid to Star. This figure was the equivalent in Singapore dollars of $43,209,853.34. Star deposited the replacement cheque for payment into Star's account with the National Australia Bank at Bundall, Queensland.

[17] On 27 September 2018, the replacement cheque was dishonoured by the OCBC Bank. It was accepted Dr Wong took action that caused the replacement cheque to be dishonoured.

[18] On 16 October 2018, Star sent a letter of demand to Dr Wong requesting payment of $43,209,853.22.[6]

The proceeding in Singapore

[19] On 1 February 2019, Star commenced proceedings against Dr Wong in the High Court of Singapore (the **Singapore proceedings**) by filing a writ of summons and statement of claim. Star sought to recover $43,209,853.22 as the outstanding sum owed by Dr Wong in respect of the CCFA or as the full amount of the dishonoured replacement cheque,[7] and (or in the alternative) damages to be assessed. Star also sought interest and costs.

[20] On 27 February 2019, Dr Wong filed a defence, contesting the merits of Star's claim by alleging the CCFA had been varied by an oral agreement and Star was not entitled to complete and present the replacement cheque.

[21] In April 2019, the Singapore proceedings were transferred to the Singapore International Commercial Court (**SICC**). On 24 April 2019, Star applied for summary judgment.

[22] On 17 May 2019, Dr Wong amended his defence to plead for that "by reason of section 5(2) of the *Civil Law Act* (Cap 43), the Plaintiff's action is not maintainable".

[23] This was a reference to the *Civil Law Act* (Cap 43) of Singapore (**CLA**). By section 5(2), the CLA provides that:

> "No action shall be brought or maintained in the court for recovering any sum of money or valuable thing alleged to be won upon any wager or which has been deposited in the hands of any person to abide the event on which any wager has been made."

[24] There are exceptions to this prohibition, but none is relevant for the determination of Star's claim.

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6 There is a discrepancy of $0.12 between the figure calculated by Star and the amount claimed in each of the court proceedings. No party contended that the difference had any importance for the purposes of this application.

7 This part of the claim was made pursuant to section 55(1) of the *Bills of Exchange Act* (Cap 23) (SG), which is the analogue of s 76 of the *Cheques Act*.

[25] On 29 May 2019, Dr Wong filed a cross-application in the Singapore proceedings seeking orders that Star's "whole claim as set out in its Statement of Claim … be struck out" on the basis that it disclosed no cause of action, or alternatively was scandalous, frivolous, or vexatious and/or an abuse of process by reason of s 5(2) of the CLA.[8]

[26] On 21 August 2019, International Judge Jeremy Cooke heard both Star's application for summary judgment and Dr Wong's cross-application in the SICC.

[27] On 22 August 2019, Cooke IJ delivered *ex tempore* reasons for the decision on both applications.[9]

[28] His Honour dismissed Star's application for summary judgment, finding that Dr Wong's defence raised triable issues.

[29] On the cross-application, Cooke IJ concluded that Dr Wong was entitled to have the claim struck out. His Honour explained:

> "[57] …The Defendant rightly says that the Court cannot countenance an action brought in respect of sums allegedly won on the wagers laid by the Defendant in Queensland in Australia. … The Defendant is entitled to have the claim struck out under O 18 r 19 of the ROC because it has no prospect of success, and because the Act says that no action can be brought for the sums in question.
>
> [58] In consequence, the pleadings disclose no reasonable cause of action in themselves when read in context, as claiming a sum which falls foul of s 5(2) of the Act. The claim can also be characterised as vexatious and an abuse of the process of the Court on the evidence presented, because it has no prospect of success at all.
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> [59] For all the above reasons … the strike out application must be granted.
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> [60] I conclude only by stating that however it might stick in the gullet and appear unconscionable for a wealthy man to avoid what has been described as a "debt of honour", by reason only of s 5(2) of the Act, particularly if, as I was told was the case here, the defaulter has made substantial money from involvement in the online betting industry and for a Singapore citizen be able to bet with impunity abroad at regulated casinos where he could not do so if he had betted at regulated casinos in Singapore, this is recognised by the Court of Appeal at [32] of the *Star City* decision[10] as a

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8 This application was brought pursuant to O.18 r.19(a), (b) and (d) of the Singaporean Rules of Court (**ROC**), which are the equivalent of UCPR r 171.

9 A settled version of these reasons was issued by the SICC on about 7 July 2020 as *The Star Entertainment QLD Ltd v Wong Yew Choy and another matter* [2020] SGHC(I) 15.

10 This is a reference to the Singapore Court of Appeal decision in *Star City Pty Ltd v Tan Hong Woon* [2002] 1 SLR(R) 306.

> necessary concomitant of a public policy which is protective of Singapore's interests. …
>
> [61] The action against the Defendant is dismissed for the reasons given."

[30] On 27 August 2019, the sealed order of the SICC (**Order**) was issued by the registrar. It was relevantly in these terms:

> "The Plaintiff's whole claim as set out in its Statement of Claim dated 1 February 2019 in SIC/S 3/2019 is struck out.
>
> The Plaintiff is to pay the Defendant costs of the application fixed at S$20,000, and disbursements (to be agreed)."

The first Queensland proceeding

[31] On 30 January 2019,[11] Star had commenced proceeding BS891/2019 in this court against Dr Wong (the **first Queensland proceeding**) seeking to recover $43,209,853.22 plus interest and costs. Star's claim in the first Queensland proceeding was for loss due to the dishonour of the replacement cheque, or loss caused by reliance on a false representation that the cheque would be honoured, or damages pursuant to s 76 of the *Cheques Act.*

[32] On 27 February 2019, Dr Wong filed a conditional notice of intention to defend,[12] disputing the jurisdiction of the court to entertain Star's claim without his consent and contending the proceeding was irregular because:

> "1. The Claim and Statement of Claim has not been properly served on the Defendant pursuant to Chapter 4, Subdivisions 2 or 3 of Part 7 of the [UCPR]; and
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> 2. The continued prosecution of this proceeding is an abuse of court's process, since the Plaintiff has instituted and served on the Defendant in Singapore proceedings in the High Court of Singapore claiming substantially the same relief as it claims herein".

[33] The notice was filed the same day Dr Wong filed his original defence in the Singapore proceedings.

[34] On 12 March 2019, Star discontinued the first Queensland proceeding. It did so unilaterally, no defence having been filed by Dr Wong.[13] This was about two weeks after Dr Wong had filed a defence in the Singapore proceedings. It was about two months before Dr Wong amended that defence to plead s 5(2) of the CLA.

The present proceeding

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11 This was about two days before Star commenced the Singapore proceeding.
12 See UCPR r 144.
13 See UCPR r 304.

[35] On 19 February 2020, Star commenced the present proceeding against Dr Wong in this court seeking $43,209,853.22 as damages for breach of the CCFA or as liquidated damages for dishonouring the replacement cheque,[14] plus interest and indemnity costs.

[36] On 17 August 2020, Dr Wong filed a conditional notice of intention to defend, disputing the court's jurisdiction to entertain the claim without his consent, and/or contending the proceeding is irregular because the claim and statement of claim had not been properly or validly served and the proceeding was otherwise an abuse of process.[15]

[37] On 31 August 2020, Dr Wong filed the present application, with a view to it being heard in the applications list on 15 October 2020 with a time estimate of two hours. The estimate proved overly modest. The application was adjourned to a day allocated in the civil list. It was heard on 22 February 2021.

Discretion to assume jurisdiction under r 127

[38] Dr Wong applies under r 127(2)(c). In its full terms, r 127 provides:

> "**127 Court's discretion whether to assume jurisdiction**
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> (1) On application by a person on whom an originating process has been served outside Australia, the court may dismiss or stay the proceeding or set aside service of the originating process.
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> (2) Without limiting subrule (1), the court may make an order under this rule if satisfied—
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> (a) service of the originating process is not authorised by these rules; or
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> (b) the court is an inappropriate forum for the trial of the proceeding; or
>
> (c) the claim has insufficient prospects of success to warrant putting the person served outside Australia to the time, expense and trouble of defending the claim."

[39] In April 2019, r 127 was introduced in this form. It is part of "harmonised rules" for service outside of Australia originating from the Council of Chief Justices' Rules Harmonisation Committee. Rule 11.6 of the *Uniform Civil Procedure Rules* 2005 (NSW) is in the same terms as r 127. So are rule 7.04 of the *Supreme Court (General Civil Procedure) Rules* 2015 (Vic) and rule 147C of the *Supreme Court Rules* 2000 (Tas).

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14 This claim is made pursuant to section 76 of the *Cheques Act.*

15 At the hearing of the application Dr Wong raised no issue about the service of the claim and statement of claim.

[40] As a person served with the claim outside Australia, Dr Wong is entitled to bring an application under r 127. The discretion conferred by r 127(1) is not limited to the three circumstances in r 127(2);[16] but, in this application, Dr Wong relies on r 127(2)(c) only.

[41] The rule adopts the language used by the High Court majority in *Agar v Hyde*.[17] So, for the purpose of r 127(2)(c), whether a claim has insufficient prospects of success is determined on the same principles as summary judgment.[18] These require "a high degree of certainty about the ultimate outcome of the proceeding if it were allowed to go to trial in the ordinary way".[19] The relevant question is whether the plaintiff "has no real prospects of success." A real prospect may be contrasted with a fanciful chance of success.

[42] As the applicant, Dr Wong bears the onus of persuading the court that Star has insufficient prospects of success to warrant putting him to the time, expense and trouble of defending.

[43] For Dr Wong, two alternative arguments were advanced as to why the court should conclude Star's claim has insufficient prospects of success. The first is that maintenance of the proceeding is barred by "a *res judicata* or cause of action estoppel" arising from the dismissal of the Singapore proceedings. The second is that the proceeding is an abuse of the court's process. It is convenient to deal with each in turn.

***Res judicata* or cause of action estoppel**

[44] Counsel for Dr Wong submitted that seven things were necessary to make good the contention that a relevant *res judicata* or cause of action estoppel arises from the decision of Cooke IJ in the Singapore proceedings.

[45] Four of these are not seriously in issue, namely: that the decision was judicial; that it was pronounced; that it was made by a body with jurisdiction over the parties and the subject matter; and that the parties are relevantly the same as those in the present proceeding.

[46] The fifth necessary thing – that the Order was a final decision – was disputed by Star.

[47] Expert opinions on Singapore law by Gregory Vijayendran Ganesamoorthy SC and Thio Shen Yi SC were tendered. These leading counsel concur that the decision of the SICC prevents Star from further pursuing its claim against Dr Wong in the Singapore proceedings.[20] An appeal to the Singapore Court of Appeal was the only means of challenge to the Order. It follows that the decision of Cooke IJ was final in the usual sense.

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16 *Azzi v Fox Fire Security System LLC* [2020] NSWSC 331 at [20] (Davies J).

17 (2000) 201 CLR 552 at [57]-[60] (Gaudron, McHugh, Gummow and Hayne JJ).

18 *Uber Technologies Inc v Andrianakis* (2020) 61 VR 580 at [99] (Niall, Hargrave and Emerton JJA).

19 (2000) 201 CLR 552 at [57].

20 This is so notwithstanding the apparent difference between the Order which strikes out the "whole claim as set out in [Star's] Statement of Claim" and the reasons of Cooke IJ that Star's "action against the defendant is dismissed."

[48] For Star it was submitted the decision was not final in a relevant sense, because it was concerned with a statutory bar to an action. This submission raised issues about the effect of the High Court's decision in *John Pfeiffer Pty Limited v Rogerson*[21] on much earlier authorities, including *Harris and Adams v Quine*,[22] namely whether *res judicata* may be established from decisions on matters formerly regarded as "procedural", such as limitation periods. The submission may also have involved an issue about whether a statute, like s 5(2) of the CLA, that bars a remedy also extinguishes a right. For reasons set out below, it is not necessary to rule on that submission.

[49] There remain two of Dr Wong's necessary matters in dispute. They are whether the decision of Cooke IJ was on the merits and whether it determined a question raised in the present proceeding. The two are related.

[50] In *Willoughby v Clayton Utz (No 2)*,[23] the Western Australian Court of Appeal adopted Lord Brandon's conclusion that:

> "a decision on the merits is a decision which establishes certain facts as proved or not in dispute; states what are the relevant principles of law applicable to such facts; and expresses a conclusion with regard to the effect of applying those principles to the factual situation concerned."[24]

[51] Their Honours also concluded that "reasons for judgment are relevant and may be examined to determine" whether the causes of action were decided on the merits.[25]

[52] The reasons of Cooke IJ make clear that the only matter determined by the SICC and resulting in the Order was that s 5(2) of the CLA barred Star's claim in any Singapore court. In so doing, Cooke IJ followed the decision of the Singapore Court of Appeal in *Star City Pty Ltd v Tan Hong Woon*. His Honour quoted from the following passage of the Court of Appeal's reasons:

> "We emphasise that our conclusion on the operation of s 5(2) of the Civil Law Act merely negatives the enforcement but not the validity of gaming contracts; the casinos can always attempt to enforce their causes of action elsewhere."[26]

[53] The reasons of Cooke IJ are evidence of a determination directly involving only the issue raised by Dr Wong's defence plea of s 5(2) of the CLA. The SICC did not finally resolve the conflict about the existence or extent of the causes of action asserted by Star against Dr Wong. SICC did not determine whether Star had the legal rights claimed or whether Star had proved the facts it alleged to establish its

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21 [2000] 203 CLR 503.
22 (1869) 4 QB 653.
23 (2009) 40 WAR 98 at [29].
24 *DSV Silo-und Verwaltungsgesellschaft mbH v Owners of The Sennar (No 2)* [1985] 1 WLR 490 at 499.
25 (2009) 40 WAR 98 at [28], [30].
26 [2002] 1 SLR(R) 306 at [32]. In this case, at [33], the Singapore Court of Appeal also decided that s 5(2) of the CLA "is a procedural provision which applies to all causes of action enforced in Singapore irrespective of where the gambling transactions took place".

claims. Cooke IJ assumed, for the purpose of Dr Wong's cross-application, that Star could prove all the facts it alleged in the Singapore proceedings.

[54] The Order necessarily involved a finding that, in the Singapore proceedings, Star sought to recover something alleged to have been won on one or more wagers with Dr Wong.

[55] In the present proceeding, Star does not seek to contradict anything found expressly or necessarily by Cooke IJ in making the Order.

[56] A possible area of interest is whether the SICC's conclusion about the effect of s 5(2) of the CLA might be a determination of or relevant to Star's position under an equivalent Queensland law. At common law gaming is not unlawful.[27] It has been regulated by statute since at least the 1520's when a Bill for "the advancement and maintenance of archery for the defence of the country" was enacted because "the science and practice" of archery had been neglected by "the growing habit of young men playing at unlawful games".[28] Among the games prohibited were "carding."[29]

[57] The language of s 5(2) of the CLA reproduces that in s 18 of the *Gaming Act* 1845 (UK) that "no suit shall be brought or maintained in any Court of Law or Equity" to recover something won on a wager or deposited to abide the result. Before separation, a similar provision was enacted by the Parliament of New South Wales, based on the same Imperial Act. It was s 8 of the *Games and Wagers Act* 1850 (NSW). After separation, the Queensland Parliament enacted another as s 33 of the *Suppression of Gambling Act* 1896 (Qld):

> "Any promise, express or implied, to pay any person any sum of money paid by him under, or in respect of, any contract or agreement rendered null and void by the [*Games and Wagers Act* 1850] or to pay any sum of money by way of commission, fee, reward, or otherwise in respect of any such contract, or of any services in relation thereto, or in connection therewith, shall be null and void, and no action shall be brought or maintained to recover any such sum of money, or any sum of money won, lost, or staked in any betting transaction whatever."

[58] These two statutes prevented parties from suing in Queensland courts to recover money owed on a wager.[30] Both provisions were repealed as laws of this State.[31] However a very similar prohibition has continued to be part of Queensland statute law through a series of enactments and repeals.[32] The current prohibition is s 255(1)(c) of the *Racing Integrity Act* 2016 (Qld):

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27 *Jenks v Turpin* (1884) 13 QBD 505 at 517 (Hawkins J).

28 33 Hen 8, cap 9.

29 s 11. It also prohibited bowling, playing quoits, nine-pins, half-bowl and tennis. These games were declared no longer to be unlawful by the *Gaming Act* 1845 (UK).

30 *Pentis & Pentis v Honianakis* [1948] St R Qd 237 (Macrossan CJ, Philp and Stanley JJ).

31 *Racing and Betting Act* 1954 (Qld), s 4, First Schedule, with effect from 1 July 1955.

32 *Racing and Betting Act* 1954, s139(1), which included an additional prohibition on bringing or maintaining an action in a court to recover money "[l]ent or advanced for the purpose of gaming or wagering"; *Racing and Betting Act* 1980 (Qld) s 4, s 248(1); *Racing Act* 2002 (Qld), s 171, s 341; *Racing Integrity Act* 2016 (Qld), s 255(c).

> "an action may not be brought in a court to recover money or other property —
>
> (i) alleged to be won or lost on a bet;
>
> (ii) given to a person as a stakeholder for an event on which a bet has been made; or
>
> (iii) lent or advanced for the purpose of betting."

[59] This prohibition does not apply to betting conducted under the CCA.[33] No equivalent of s 5(2) of the CLA applies to the claim made by Star against Dr Wong in the present proceeding. Star is not precluded from bringing its CCFA claim or its action on the dishonoured replacement cheque in this court by the Queensland analogue of s 5(2) of the CLA. The issue of whether Star's claim is barred by s 5(2) of the CLA does not arise in the present proceeding. In making the Order, the SICC did not determine a question raised in the present proceeding.

[60] It follows that Dr Wong has failed to satisfy the last of the seven necessary requirements for *res judicata*.

[61] Counsel for Star put the matter somewhat differently. They submitted that the doctrine of *res judicata* in the strict sense applies to a claim established by a judgment into which the prior claim merges, as explained by the High Court in *Tomlinson v Ramsey Food Processing Pty Ltd* [34] and recently confirmed in *Clayton v Bant*.[35]

[62] As the reasons of Cooke IJ show, in determining Star's summary judgment application his Honour made no decision on the merits of Star's claim, because he was persuaded that Dr Wong had raised matters in his defence that ought to be determined at a trial. Had Star succeeded in obtaining summary judgment, its claim might be said to have merged in a SICC judgment. Star failed. There is no judgment into which the claim could have merged. The SICC decision on Dr Wong's cross-application does not assist. For the purpose of determining it, Cooke IJ assumed Star could prove the facts necessary to make good its claim and made no determination that the facts were proved. Understood in this way, there is no scope for Dr Wong to succeed in a defence of *res judicata* in the strict sense.

[63] In truth, Dr Wong's application asserted a claim or cause of action estoppel, rather than *res judicata* in the strict sense.

[64] As noted above, the SICC did not determine whether Star has the legal rights it asserted or whether Star had proved the facts it alleged to establish its claims. Cooke IJ decided only that Star could not bring or maintain an action in the courts of Singapore to enforce those asserted rights by reason of s 5(2) of the CLA. In this respect, the decision is comparable to that considered in *Willoughby v Clayton Utz (No 2)*[36] and *Rogers v Legal Services Commission of South Australia*.[37] It is unlike

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33 *Racing Integrity Act* 2016 (Qld), s 256(a)(i).
34 (2015) 256 CLR 507 at [20] (French CJ, Bell, Gageler and Keane JJ).
35 (2020) 95 ALJR 34 at [26] (Keifel CJ, Bell and Gageler JJ), [50] (Gordon J) and [66] (Edelman J).
36 (2009) 40 WAR 98 at [30] (Pullin JA, Wheeler and Miller JJA agreeing).
37 (1995) 64 SASR 572 at 596-597 (Lander J, Cox and Prior JJ agreeing).

the circumstances considered in *Telesto Investments v UBS AG*.[38] No claim or cause of action estoppel arises.

[65] In this court there is no relevant issue to which Dr Wong could raise or plead the Order as an issue estoppel. In the circumstances, it matters not whether the decision of Cooke IJ on s 5(2) of the CLA is characterised as procedural or substantive.

[66] It follows that Dr Wong has failed to show that res judicata or cause of action or issue estoppel gives Star's claim insufficient prospects of success to warrant putting him to the time, expense and trouble of defending.

Abuse of process

[67] In *Tomlinson v Ramsey Food Processing Pty Ltd*,[39] the High Court noted that "Abuse of process is inherently broader and more flexible than estoppel", and is:

> "capable of application in any circumstances in which the use of a court's procedures would be unjustifiably oppressive to a party or would bring the administration of justice into disrepute. It can for that reason be available to relieve against injustice to a party or impairment to the system of administration of justice which might otherwise be occasioned in circumstances where a party to a subsequent proceeding is not bound by an estoppel." [40]

[68] In *Batistatos v Roads and Traffic Authority (NSW)*,[41] what amounts to abuse of process was described as "insusceptible of a formulation comprising closed categories."[42] Nonetheless, the conduct that has been held to be an abuse, and that which has not, provide some guidance in assessing Star's conduct.

[69] In *Michael Wilson & Partners Ltd v Nicholls*,[43] the High Court recognised as an abuse of the process a plaintiff instituting and continuing proceedings against a party in a second forum, when there are proceedings against that party pending in another, "if it would be unjustifiably oppressive to the party that is named as defendant in both forums."[44]. One member of the Court cautioned:

> "The fact that the same transactions and events are the subject of two separate proceedings in different forums may raise a question about abuse of the process of one or other of those forums, but it does not lead inexorably to the conclusion that there is an abuse."[45]

[70] The position may be further qualified when a forum in a foreign jurisdiction is involved. In *CSR Ltd v Cigna Insurance Australia Ltd*,[46] the High Court approved the conclusion of Robert Goff LJ in *Bank of Tokyo Ltd v Karoon*[47] that:

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38 (2013) 94 ACSR 29.
39 [2015] 256 CLR 507.
40 [2015] 256 CLR 507 at [25] (French CJ, Bell, Gageler and Keane JJ). This passage was identified and extracted by Fraser JA in *Rogers v Roche (No 1)* [2017] 2 Qd R 306 at [29].
41 (2006) 226 CLR 256.
42 (2006) 226 CLR 256 at [9] (Gleeson CJ, Gummow, Hayne and Crennan JJ).
43 (2011) 244 CLR 427.
44 (2011) 244 CLR 427 at [90] (Gummow ACJ, Hayne, Crennan and Bell JJ).
45 (2011) 244 CLR 427 at [110] (Heydon J).
46 (1997) 189 CLR 345.

> "foreign proceedings are to be viewed as vexatious or oppressive only if there is nothing which can be gained by them over and above what may be gained in the local proceedings."[48]

[71] I respectfully agree with the analysis and conclusions of Brereton J in *Re Treadtel* "that in Australia, as in England, it is not prima facie vexatious to bring parallel proceedings with respect to the same matter in different countries."[49] I also respectfully agree with his Honour's conclusions that:

> "it is well-established that the maintenance of parallel litigation in a foreign jurisdiction is not vexatious or oppressive if it offers remedies or advantages not available in the domestic forum. And a court will not readily conclude that the foreign proceedings offer no such advantage".[50]

[72] There were clear advantages of proceeding in Singapore. Star knew Dr Wong lived in Singapore. From searches, it knew that Dr Wong had direct interests in real property in Singapore, and no real property in Australia. If Star obtained a judgment in Singapore against Dr Wong, it could take enforcement action against his assets in that jurisdiction, perhaps in the same proceedings. Dr Wong engaged with the Singapore proceedings. He did not seek to set aside service. He did not plead s 5(2) of the CLA in his original defence. In contrast, Dr Wong objected to the first Queensland proceeding, disputing service and contending it was an abuse of process because of the Singapore proceedings.

[73] Ultimately, Star's decisions to sue, seek summary judgment, and continue to a hearing in Singapore may have been ill-advised, but they had a logical explanation. The circumstances sufficiently explain the decision to discontinue the first Queensland proceeding and pursue the Singapore proceedings.

[74] Star might have been reconsidered these matters after Dr Wong amended his defence. However, Star's Senior Counsel considered it open to argue and did submit before Cooke IJ that the s 5(2) defence did not apply to contracts for gambling in state-licensed casinos. It was only after that argument failed that Star commenced this present proceeding.

[75] That is not the end of the inquiry where an abuse of process is asserted.[51] The "rationale for the exercise of the power to stay is the avoidance of injustice between parties in the particular case."[52]

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47 [1987] AC 45 at 60.

48 (1997) 189 CLR 345 at 393 (Dawson, Toohey, Gaudron, McHugh, Gummow and Kirby JJ). This application involves the reverse of that before Lord Goff. Here, the enquiry might be whether the local proceeding is vexatious or oppressive when a judgment may be gained by it that could not be obtained in the foreign proceedings.

49 (2014) 104 ACSR 1 at [14]-[19].

50 (2014) 104 ACSR 1 at [23] (citations omitted).

51 *UBS AG v Tyne* (2018) 265 CLR 77 at [56] (Kiefel CJ, Bell and Keane JJ).

52 *Voth v Manildra Flour Mills Pty Ltd* (1990) 171 CLR 538 at 554 (Mason CJ, Deane, Dawson and Gaudron JJ).

[76] In *Michael Wilson & Partners Ltd v Nicholls*,[53] the majority of the High Court quoted with approval the conclusion of McHugh J in *Rogers v R*[54] that, although the categories are not closed, many cases of abuse can be identified as falling into one of three categories:

> "(1) the court's procedures are invoked for an illegitimate purpose;
>
> (2) the use of the court's procedures is unjustifiably oppressive to one of the parties; or
>
> (3) the use of the court's procedures would bring the administration of justice into disrepute".

[77] Dr Wong presses the second and third of these categories.[55] Quite properly, Dr Wong makes no allegation of improper purpose. There is nothing to suggest the claim brought against Dr Wong is not genuine. That Dr Wong appears to have no assets here is not a reason for declining to allow Star to sue him here.[56]

Unjustifiably oppressive

[78] The second category has been expressed as referring to proceedings that are "seriously and unfairly burdensome, prejudicial or damaging"[57] or "productive of serious and unjustified trouble and harassment".[58]

[79] Dr Wong has offered no evidence that any specific burden, prejudice, damage, trouble or harassment will arise from the present proceeding. He will suffer the usual ill-effects of being a party to litigation. It may be assumed that the time, expense and trouble for a defendant outside Australia is greater than for a local litigant. Australian lawyers have had to be instructed. Communications with them will likely involve increased costs. Technology may have to be used. Perhaps interpreters may be required to ensure a full understanding of the case and the defence. Dr Wong may need to travel to Australia to give evidence. He will have to plead a defence to the substance of Star's claim for a second time.

[80] Against those considerations, Star has pleaded a relatively straight-forward claim in damages, including under the *Cheques Act*. It is for a substantial amount. It would justify Dr Wong incurring costs in his defence. Star operates its business in this jurisdiction. It was on a visit here that Dr Wong engaged in the conduct that is part of the explanation for the damages claimed. Dr Wong's cheques were cashed here and the process for presenting the replacement cheque for payment began here. The agreement on which Star sues is alleged to have been made in Queensland. It appears to include a submission by Dr Wong to the jurisdiction of Queensland courts.

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53 (2011) 244 CLR 427 at [89] (Gummow ACJ, Hayne, Crennan and Bell JJ).

54 (1994) 181 CLR 251 at 286.

55 For Dr Wong it was not contended that Star has invoked this court's procedures for an illegitimate purpose.

56 *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591 at 613.

57 *Oceanic Sun Line Special Shipping Co Inc v Fay* (1988) 165 CLR 197 at 247; confirmed in *Henry v Henry* (1996) 185 CLR 571 at 576.

58 *Hamilton v Oades* (1989) 166 CLR 486 at 502.

[81] In the absence of any specific evidence, I am not persuaded that allowing the proceeding to continue will result in Dr Wong incurring a serious and unfair burden, prejudice or damage or cause him any serious and unjustified trouble or harassment in defending himself.

Bringing the administration of justice into disrepute

[82] As Lord Diplock observed in *Hunter v Chief Constable of the West Midlands Police*,[59] the court has an inherent power:

> "to prevent a misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless … bring the administration of justice into disrepute among right-thinking people".[60]

[83] For Dr Wong, it was put that allowing the present proceeding to continue would bring the administration of justice into disrepute in two different ways.

[84] *First*, the conduct of Star was said to be "out of keeping with the modern conduct of litigation".

[85] The legislated philosophy in this court is well-known. Parties are to proceed in an expeditious way and the rules are applied to avoid undue delay, expense and technicality and to facilitate the just and expeditious resolution of the real issues at a minimum expense.[61]

[86] Star commenced this proceeding within 18 months of the dishonour of the replacement cheque. True, there was a delay of about six months between the Order of the SICC and the filing of the present claim here. The delay does not seem undue. In that period, Star ought to have considered several matters – including an appeal in Singapore and the utility of suing Dr Wong in a jurisdiction where he appears to have no assets.

[87] At first glance, the overall conduct of Star might appear erratic. The sequence of steps taken by Star is considered at [72] to [74] above. On closer examination, Star has an explanation for its conduct. I am not satisfied that Star's conduct is such that allowing the proceeding to continue would bring the administration of justice into disrepute; and certainly not among right-thinking people.

[88] *Second*, for Dr Wong it was put that Star was engaging in the undesirable practice of "forum shopping" and "should not be permitted to continue to shop its claim around jurisdictions until it obtains the result with which it is happy."

[89] It would be wrong to characterise what has occurred in that way. The present proceeding is plainly a result of Dr Wong's successful cross-application in Singapore, not of any conscious choice by Star to litigate here rather than elsewhere. As Lord Simon of Glaisdale observed of forum shopping:

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59 [1982] AC 529.
60 [1982] AC 529 at 536.
61 UCPR, r 5.

> "it is only a pejorative way of saying that, if you offer a plaintiff a choice of jurisdictions, he will naturally choose the one in which he thinks his case can be most favourably presented: this should be a matter neither for surprise nor for indignation."[62]

[90] The circumstances in this case are quite unlike those found in *UBS AG v Tyne*,[63] on which Dr Wong relied. There is no evidence of Star causing delay, undue expense or injustice by tactical manoeuvring or of Star attempting to manipulate Dr Wong or the courts by commencing proceedings in Singapore and Queensland. No part of Star's claim was withheld from the Singapore proceedings with a view to later pursuing it in this court or another. The whole of its claim was pursued in each forum. As noted, Dr Wong will have to plead a defence to the substance of Star's claim for a second time. This is because none of the issues Star raises was determined in the Singapore proceeding, as a result of Dr Wong's successful cross-application there.

[91] In the circumstances, I am not satisfied that allowing the present proceeding to continue, after the Singapore proceedings have been concluded, would bring the administration of justice into disrepute.

Conclusion

[92] It follows that I am not persuaded that the claim by Star has insufficient prospects of success to warrant putting Dr Wong to the time, expense and trouble of defending to that claim. Star's prospects are not fanciful. On the contrary, Star appears to have a good arguable case with an obvious and substantial connection to this jurisdiction.

[93] The prevention of injustice has long been a consideration for the exercise of discretion to decline jurisdiction.[64] Considering the circumstances of the proceeding, I am not satisfied Dr Wong is at risk of injustice, if the proceeding continues. If it were dismissed or stayed, Star would be prevented from having its claim against Dr Wong determined on its merits.[65] That would be an injustice.

[94] For these reasons, the application by Dr Wong should be dismissed.

[95] Costs of the application should follow the event. Given Star's endorsed claim for indemnity costs pursuant to cl 6 of the CCFA, the better course is to invite the parties to make short written submissions on costs within 14 days.

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62 *The Atlantic Star* [I9741 AC 436 at 471.

63 (2018) 265 CLR 77.

64 *Voth* (1990) 171 CLR 538 at 554 (Mason CJ, Deane, Dawson and Gaudron JJ); *Regie National des Usines Renault SA & Anor v Zhang* (2002) 210 CLR 491 at 503 (Gleeson CJ, Gaudron, McHugh, Gummow and Hayne JJ).

65 *Black-Clawson* [1975] AC 591 at 618E (Lord Reid).