

IN THE SUPREME COURT OF BELIZE, A. D. 2013

CLAIM NO. 564 OF 2013

BETWEEN: (ZHOU ZHI WEI CLAIMANT
(AND
(SARIKA SADARANGANI DEFENDANT

CLAIM NO. 565 OF 2013

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(AND
(VEENA SADARANGANI DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Mikhail Arguelles for the Claimant

Mrs. Agnes Segura-Gillett for the Defendant

J U D G M E N T

Facts

1. Zhou Zhi Wei, the Claimant, is the Owner and Director of William's Supermarket at 24 A 6th Street in Belize City, Belize. Sarika Sadarangani and Veena Sadarangani, the Defendants are businesswomen and are the Managing Director and Director respectively of Doony's Ltd., a business selling electronics, large and small appliances and household items. Various

cheques valued at several tens of thousands of dollars were written out to the Claimant by the First Defendant and Second Defendant and those cheques were subsequently dishonoured by the various banks in Belize. In October 2011, the Claimant and the Defendant met with an attorney at the Claimant's residence with a view to settling the dispute which arose between the parties over the unpaid debt and bounced cheques. After that meeting the 2nd Defendant made a number of payments to the Claimant totaling some \$47,400.00 but subsequently stopped making payments. The Claimant has brought this claim for damages and loss arising out of these dishonoured cheques which were returned by the bank for insufficient funds. He is also seeking damages for bank charges levied on him for the dishonoured cheques along with interest and costs. The Defendants resist the claim on the basis that the cheques were paid to the Claimant in furtherance of an illegal contract arising from the sale by the Claimant to the First Defendant of illegal lottery numbers. They are asking the court not to enforce the contract as it is illegal. The decision of the court now follows.

Issues

2. 1) Whether the dishonoured cheques were paid by the Defendant to the Claimant pursuant to a lawful and enforceable contract?
- 2) Whether the Claimant is entitled to recover the sums set out in the dishonored cheques from the Defendants?
- 3) What sums, if any, are due and payable to the Claimant by the Defendants?

The Case for the Claimant

3. At trial, there were two witnesses for the Claimant: the Claimant Zhou Zhi Wei and Emil Arguelles, Attorney at Law. Mr. Zhou Zhi Wei testified in his witness statement that he is the Owner and Director of William's Supermarket located at 24 A 6th Street in Belize City. He then sets out in the next 13 paragraphs of his witness statement the details of 14 different cheques written to him by the Defendants on different dates between May 20th, 2010 and September 20th, 2010 (Exhibits "ZZW 1" to "ZZW 14"). Each of these cheques were dishonoured by the bank due to insufficient funds. Mr. Wei explained that he had a business arrangement with the Defendants Sarika and Veena Sadarangani whereby they would require cash from him and he would front them the money at two separate rates, 5% if the cheques were post-dated and 2% if the cheque was dated on the actual day that the Defendants received the money. For example, if one of the Defendants wanted money, she would give Mr. Wei a cheque for \$10,000.00 and he would give her the \$10,000.00 less 5% if it was post dated, and that was how he made his profit. Each cheque was a guarantee or security for the money loaned to the Defendants. After all the cheques had been dishonoured, he met with the Defendants at his house along with a Notary Public, Emil Arguelles, to discuss a payment plan. The Defendants agreed to a payment plan in front of Mr. Arguelles and the Second Defendant made a few payments but eventually she defaulted. The First Defendant never made a single payment.

Mr. Wei was cross-examined extensively by Mrs. Segura-Gillett on behalf of the Defendants. He admitted that he has been a businessman for the past thirteen years as the owner of William's Supermarket and that he considers himself to be a successful businessman.

Several cheques were shown to Mr. Wei and he was asked whether the bank dishonoured those cheques; he replied yes. He was asked whether he continued to accept these cheques from Sarika Sadarangani even though the bank kept refusing to honor them, and he said yes he did. Mrs. Segura-Gillett asked whether he thought that continuously accepting cheques from a person on the same account on which previous cheques were dishonoured was not in keeping with the practices of a good businessman. Mr. Wei said that he was acting as a friend of Sarika Sadarangani. He reluctantly agreed with Mrs. Segura Gillett's suggestion to him that it makes no sense to continue accepting cheques from somebody who has no money. He was questioned in a similar manner about cheques given to him by Veena Sadarangani. He agreed that it was not a common business practice for him to continue accepting cheques from the same person on the same account which is empty; he said that no that was not a usual thing that he would do. Mr. Wei was shown a particular cheque ZZW 3 and asked if there was any stamp on that cheque showing that it had been dishonoured by the bank; the witness said there was none. He agreed that Veena Sadarangani paid him \$47,000.00 and she owed him \$46,400.00, while Sarika Sadarangani owed him \$79,000.00. He agreed that the total owed by the Defendants was \$125,400.00. A meeting was arranged between Mr. Wei and Veena Sadarangani and Sarika Sadarangani in the presence of Emil Arguelles Attorney at law and Notary Public. He was shown a Promissory Note drafted by Mr. Arguelles on his instructions which showed that the total sum owed by Sarika and Veena Sadarangani was \$250,000.00. When asked about the difference in the amount stated as owed on the note as opposed to the amount he said earlier in his evidence, Mr. Wei said that at the time they were friends so he told her you

can pay me half the amount first. He further explained that at the time she wrote a lot of cheques for different amounts for paying back the total sum; first they paid some cash, some in cheques, and the total amount was \$250,000.00. He said he could not recall whether the cheques he has produced in evidence were the same cheques listed in the schedule of the promissory note. He later agreed that yes they were the same cheques and that the whole reason for the promissory note were the dishonoured cheques. When asked why the amount claimed in the promissory note was \$250,000.00 and the cheques only added up to \$120,000.00, he said that while \$250,000.00 was the amount owed, \$120,000.00 is the amount he can prove through the cancelled cheques. The Claimant was asked about paragraph 17 of his witness statement where he said:

“The said monies owed to me are as a result of the following arrangement: The first and Second Defendants would require cash and I would front them the money at two separate rates, 5% if the cheque was post dated and 2% if the cheque was dated on the actual day the First and Second Defendants received the money.”

When asked where these transactions took place, Mr. Wei said they took place at his business place in King’s Park. He explained that the Defendants came to get cash from him instead of simply going to a bank when it was a Friday or holiday and the bank is closed. When asked by the court about the purpose of money and cheques being transferred between the parties, he said that they were friends, she has business and sometimes when she needed money she would come to him. He said he got the money from his friends. When asked whether he did not think it prudent to get something in writing from the Sadaranganis for such large amounts of money, Mr. Wei said that they were friends and he

trusted them. Upon being re-examined by Mr. Arguelles, Mr. Wei said that he could only prove \$120,000.00 by way of cheques and he could not prove the additional sums as those were by way of verbal agreements. Over the years the amount owed to him by the Defendants totaled \$600,000.00 but by the date of the Promissory Note they were in agreement for \$250,000.00.

4. The second witness for the Claimant was Emil Arguelles. In his witness statement he said that he is an Attorney and Founding Partner of Arguelles & Co. located on the 4th Floor of The Matalon Building Coney Drive Belize City Belize. He is a friend of Zhou Zhi Wei and had previously done legal work for him. He had also done legal work for the Defendants as well. He was asked by Mr. Wei in late 2011 as a mutual friend and to witness as Notary Public an agreement he was entering into with Sarika Sadarangani and Veena Sadarangani for the repayment of some dishonoured cheques. He agreed to meet with all three parties at Zhou Zhi Wei's house at 24 A 6th Street in Belize City Belize. Mr. Arguelles testified that all sides wished to avoid court proceedings and its attendant costs and to avoid possible reputational injury to the Defendants who are in the money transfer business. The sum of Four Thousand dollars per month was agreed to be paid by either the First or Second Defendant monthly until expiration of the debt. The Defendants did not want to enter into a formal agreement since they had given their word that they would make the monthly payments to which William also agreed. Payments ceased shortly thereafter.
5. Upon cross examination by Mrs. Segura Gillett, Mr. Arguelles said that he was not acting as Mr. William's attorney when all parties met at William's house, but as a friend to all sides.

He agreed that he was there at William's request and that the Sadaranganis had no legal representation at this meeting. He agreed that he was asked by William to prepare an agreement as a result of the discussions and that he prepared and forwarded a promissory note to the Defendants for their review. He explained that the amount of \$250,000.00 stated on the promissory note was a mutually agreed amount between the parties. The total cheques were shown to Mr. Arguelles and acknowledged by the Defendants to be theirs.

The Defendants' Case

6. The Defendants called five witnesses. The first was Sarika Sadarangani, the Defendant in Claim No. 564 of 2013 of this consolidated claim. Ms. Sadarangani said in her witness statement that she is the Managing Director of Doony's Ltd, a company owned and operated by her family. Doonys Store sells electronics large and small appliances and household items and Doony's Instant Loan provides financial services in the form of small consumer loans to customers. Doony's Ltd. is also a Western Union Agent and provides additional financial services in that capacity. She knows the Claimant as a businessman who owns and operates William's Supermarket, and she was first introduced to him as "*William*" in the latter part of 2009 by a mutual acquaintance, her uncle Prakash "*Peter*" Gianchandani. Ms. Sadarangani states that during that phase of her life, she had taken up gambling and through her contacts she was made aware that boledo was being sold in large quantities through "*improper*" channels. This was not part of the licensed boledo of the country. The boledo scheme operated by William and a few other Chinese businessmen was one in which William simply made a record of the buyer's number and signed a paper acknowledging the numbers bought. She refers to this type of boledo as "*signed boledo*" to distinguish it from legal boledo which is regulated. If the number bought by a customer played in nightly boledo draw, for example, William would

honor the signed note and make the payout to the winner. She was interested in buying "*signed boledo*" from William because he offered his customers 25% free or bonus numbers, while other businessmen only offered 15%. She said that after being introduced to William, she started buying "*signed boledo*" from him on a regular basis. She would initially go to William's store and he would give her a small notebook with a carbon inside. She would write down her numbers in the book and give it back to William who would sign off on her numbers and then extract a carbon copy of the list of numbers and hand it to her as proof of her purchase. At the start of dealings with William, Sarika Sadarangani would pay upfront for half of the numbers bought and William would give her the balance on credit. She was on a winning streak, William could not afford to pay her and he therefore held sums on account for her. Ms. Sadarangani claims that in October 2009, William was indebted to her in the sum of Three Hundred Forty Three Thousand Dollars (\$343,000.00) which he could not afford to pay her. She said that she did not mind that he could not pay her as she continued to buy boledo from him on a regular basis. She said that William would record her purchases and winnings/losses in a book. After a while she and William established a business relationship where she would simply send lists of her numbers with friends or employees, and William would sign off on them. At times she would duplicate copies of her list of numbers to William and he would keep one and sign and return the other to her. Other times she would send one copy of her list of numbers and William would then photocopy the list using his fax machine, sign it and then return a copy of the list to her. After some time William started taking her requests over the phone and via text messages. This happened especially when she was out of the country travelling on business. This arrangement with William lasted about one year and a half. There were times she would buy up to BZ \$30,000.00 worth of a number or numbers in one night. At times she would win up to \$80,000.00 worth of "*signed boledo*" from William. When her account was in the red after she was in a losing streak, William would insist that she give him a personal cheque to hold as security for her wager.

This also occurred when she bought amounts of boledo that were significantly larger than usual. Once she had a big win, William would return the cheque to her and deduct the value of the cheque from her winnings. Sarika Sadarangani would ask her mother Veena Sadarangani to issue a cheque to William when she was not in Belize City. She did not mind asking her Mother to do this because it was understood that the cheques would not be negotiated through the bank as they were only security between William and Sarika. Sarika and William had a falling out in April 2010 when William refused to honor a payment due to Sarika for numbers she had requested for a Sunday lottery draw. She was not aware that William had been presenting her cheques to the bank for payment. She and her mother wrote a number of cheques to William. She became aware that William was attempting to cash the cheques at the bank in 2011 and that the cheques had been returned for insufficient funds. Sarika said that she is at a loss as to why William would present those cheques to the bank for payment when he knew the cheques were drawn on accounts that had very little money in them. She believes that William sought to use those cheques to try to legitimize the debt owed by her to him as a result of her illegal gambling. She has no evidence of the lottery sheets she used because she destroyed them in fear that her father would find out about her gambling. She stated that after meeting with Mr. Wei in October 2011 in an attempt to settle the matter without litigation, her mother paid him \$47,000.00 on Sarika's behalf in an attempt to keep him quiet as he threatened to soil their names if no payments were made.

Under cross-examination by Mr. Arguelles, Sarika said that signed boledo means illegal boledo and that by her evidence she is admitting to taking part in an illegal transaction. It was put to her that William never owed her any money and she said yes he did. She agreed with learned Counsel's suggestions that she has not produced any copies of the lists, or text messages she sent to William. She disagreed that the cheques were for security for a loan.

She disagreed that the falling out was because she kept giving William bad cheques. It was put to her that the reason she could not find any of the lists is because they never occurred; she disagreed. She never had any loan agreement with William.

7. The next witness for the Defendants was Mrs. Veena Sadarangani, mother of Sarika Sadarangani. She is one of the Directors of Doony's Ltd. She says that she became acquainted with Mr. Wei in 2009 when he would come to Doony's Store looking for her daughter Sarika. After that she saw him at his supermarket. She was aware back in 2010 that Mr. Wei and Sarika had some business dealings with each other. On a number of occasions when Sarika was out district or out of Belize she would call and ask her mother to write a check for William. Mrs. Veena said that she understood that the cheques were for security purposes and William just wanted them as guarantee that Sarika would pay him. Mrs. Sadarangani said that she wrote William a number of cheques on Sarika's behalf which were all undated and written on her personal account since they had nothing to do with Doonys business. She was not aware of the nature of the business between Sarika and Mr. Wei until the latter part of 2011 when there was a breakdown in the relationship between Sarika and William. She was most upset upon learning that her daughter had been buying illegal boledo from William because her actions were an embarrassment to the family as they were upstanding members of the community. William came to Doonys one day and informed Mrs. Sadarangani that Sarika owed him money for boledo that she had been buying for months. It was then that she discovered that William had been trying to cash the security cheques that she had given to him and that those cheques had been dishonored by the bank. Mr. Wei threatened that if she did not pay off Sarika's debt to him

he would publish the dishonored cheques in the newspapers and that this would affect Doony's business and its Western Union license. She did not want her family's name sullied and she did not want her husband to find out about their daughter's gambling so she agreed to meet with William to work out something. In October 2011 she and Sarika met William at his home on 6th Street and William was there with his attorney Emil Arguelles. William and his attorney claimed that Sarika in fact owed William \$600,000.00 but William was willing to settle for \$250,000.00. They asked Sarika and Veena to sign a promissory note to pay that sum by installments. Mrs. Sadarangani said that she refused to sign because he was not a party to any dealings between Sarika and Wei, and because she did not approve of the gambling arrangement between them. However she wanted to keep the disagreement private so she told William she would try to make small payments to him on a monthly basis, depending on the yield of her business; she did make a number of payments to him after that meeting. After consulting her own attorney, she ceased making regular payments to William, who would then come occasionally to harass her and threaten to report her to the Central Bank. She would pay him to leave her alone, to protect Sarika from him and to try and save her family name from scandal.

8. Under cross-examination by Mr. Arguelles, Mrs. Sadarangani denied the suggestion that she understood that the cheques she gave to William were for loan payments. Learned counsel put to the witness that in paying William she assisted in the illegality; Mrs. Sadarangani said no.

Under re-examination by Mrs. Segura-Gillett, Mrs. Veena Sadarangani clarified that she personally never bought boledo from William; she only found out later that the cheques were for boledo, and from the date she found out about it she spoke to her daughter to put a stop to it.

9. The next witness for the Defendants was Prakash "*Peter*" Gianchandani, uncle of Sarika Sadarangani and brother of Veena Sadarangani. He says he is a friend of Zhou Zhi Wei and he introduced Sarika to Mr. Wei in late 2009. Wei was in the business of selling large quantities of boledo on the black market as his boledo sales were not part of the licensed boledo in which the buyer is given a ticket. The parallel scheme operated by William was based on trust between the parties and William would simply give the buyer a piece of paper. If the number bought by the buyer played in the nightly boledo draw, then William would make pay-out to the buyer. Sarika started buying large quantities of "*black market*" boledo from William and at times she would ask Peter to go and buy boledo from William for her. She would give Peter a list of numbers and he would go to William's Shop on 6th Street to deliver the list. Peter says he knows for a fact that William kept a book of all the boledo Sarika bought from him and all of the times she won or lost from him. Peter says he was very much involved in Sarika's dealings with William and he knows that the only dealings between them were not loans, but transactions involving large scale buying and selling of illegal boledo.

Under cross-examination by Mr. Arguelles, Peter admitted that he has not provided the court with any copy of the tickets he spoke of in his evidence. He said he would give the

copy of the tickets to his niece Sarika. He also admitted that he assisted Sarika in her illegal gambling. He also agreed that he has not provided any evidence of William's gambling book. Cross examination of Peter was interrupted when Mr. Arguelles elicited questions on a document not yet in evidence to which he had earlier objected. Since that objection no longer stood, Peter was then allowed by the court to tender a copy of a list which he said was one of the lists he would take to William for Sarika (Exhibit PG 2). He explained that William would sign his name on the list three times and put the amount of money on the paper. He would then photocopy the list and return it to Peter to give to Sarika. When cross-examination resumed, Mr. Arguelles put to Peter that that was not William's signature on the list. Peter said William signed the list in front of him and it is William's signature.

10. The next witness for the Defendants was Sabrina Stuart, a Western Union clerk who worked for Doonys for the past eight years. She also knows Mr. Wei also known as "*William*" whom she met through Sarika about five years ago when she accompanied her to purchase boledo from him at his supermarket on 6th Street. Sarika eventually sent Ms. Stuart on her own to deliver her list of boledo numbers to William. Sarika would write up two copies of her list of boledo numbers; one for herself and one for William. Ms. Stuart would take both lists to William who would sign one and return it to her and he would keep one copy. She would then take back the signed copy of the list of numbers to Sarika. She says she was never given any boledo ticket by William in respect of the boledo that Sarika bought from him. She also recalls seeing Sarika writing cheques for William in 2010 when he would come to Doonys to collect payments from her for boledo.

Under cross-examination by Mr. Arguelles, Ms. Stuart agreed that she had not submitted any copies of these lists into evidence. She also agreed that by her evidence of taking the lists from Sarika to William, she assisted in the illegality. She agreed with the suggestion that while she recalls seeing William at Doonys and seeing Sarika writing cheques to him, she cannot be sure of all Sarika's transactions.

11. The final witness for the Defendants was George Abraham, self employed cab driver.

Mr. Abraham said in his witness statement that he worked as a Collections Officer for Doonys Instant Loan. He held that post for about five years and his duties included loan payments from Doonys Loan Borrowers, going to the bank to cash cheques and make deposits and doing anything else asked of him by his employers. He knew Mr. Wei also known as William whom he met through Sarika Sadarangani about one year after he started working at Doonys. Sarika used to be a big buyer of boledo and he would at times accompany her to William's store to do her business. He describes her as a "*big buyer*" because she always bought large quantities such as 20,000 pieces of a number; she would win big and she would lose big. Many times, Mr. Abraham said that he would go to William's Store to deliver a paper with Sarika's numbers on it; William would photocopy the paper, keep the original for himself and then sign it and return the copy to Sarika through Mr. Abraham. Most times Mr. Abraham would just take the list to William with no cash. As he understood it, Sarika and William had a business arrangement where William gave Sarika boledo on credit and he would deduct payment for the boledo out of her winnings. He recalls one specific occasion where he took the list of numbers to William's store but he was not there and a Chinese lady refused to take the list without a cash payment. Mr. Abrams

called Sarika on the cell and shortly after William emerged from the upper flat and ordered the lady to accept the paper from him. On another occasion, Sarika helped him by paying off a \$2,500.00 personal expense he had out of her boledo winnings which list of numbers he had dropped off at William's house the night before. Sometimes when Sarika was on a losing streak he would take payments amounting to thousands of dollars to William from her in the form of cheques, cash or both cash and cheques.

Under cross-examination by Mr. Arguelles, Mr. Abrams agreed that he had not entered into evidence a copy of any list that he had spoken of. He was asked about the incident involving the Chinese lady and whether the incident was about her refusal to provide cash without the actual cheque. The witness said no, it was boledo paper. He also rebutted the suggestion by counsel that he went to William to make cash payment as a result of cashing cheques; he said that he never cashed cheques for Sarika at William, only at the bank.

Legal Submissions on behalf of the Claimant

12. Mr. Arguelles submits on behalf of Mr. Wei that the cheques were paid as the result of a lawful and enforceable contract. It is the Claimant's contention that the cheques were paid as a result of the cashing of cheques for the Defendant. As a result of all these dishonoured cheques, the resulting debt was akin to unpaid loan amounts. The Defendants contend that the cheques were paid as a result of illegal boledo but not one of them produced any evidence to the court of the assertions they made. He submits that all of the Defendants are incredible, unreliable and not to be believed. All have admitted brazenly to the court of

their involvement in the “*alleged illegality*”. Mr. Arguelles relies on ***Halsbury’s Laws of England*** Vol. 9(1) Contract at para. 883, Fourth Ed. Reissue as follows:

“Where a plaintiff seeks to recover money paid under an illegal contract the rule is that he may not do so unless he can make out his cause of action without reliance on the illegal contract.”

He also cites ***Chitty on Contracts*** (29th Ed) Vol. 1 at para.16-198, page 1055:

“Presumption of legality. The party alleging the illegality of the contract bears the legal burden of proving this fact; therefore if the contract be reasonably susceptible of two meanings or two modes of performance, one legal and the other not, the legal burden of proving its illegality is undischarged and that interpretation is to be put upon the contract which will support it and give it operation.”

Mr. Arguelles argues that the Claimant does not rely on the illegality issue to found its rights as a result of dishonoured cheques. He cites the House of Lords case of *Moore Stephens (a firm) v Stone Rolls Ltd* (in liquidation) [2009] UKHL 39 where Lord Phillips of Worth Matravers discussed the principle of *ex turpi causa* as a principle that prevents a claimant from using the court to obtain benefits from his own illegal contract. His Lordship went on to discuss the illegality test as stated in the judgment of Lord Browne-Wilkinson in *Tinsley v Mulligan* which involved a dispute between two single women as to title to a house. The house had been purchased with their joint funds, but put into the name of the appellant. The reason for this was to facilitate fraudulent claims by the respondent on the Department of Social Services. The reasoning of the majority of the House of Lords as stated in the judgment of Lord Browne-Wilkinson was as follows:

"...it is now clearly established that at law (as opposed to in equity), property in goods or land can pass under, or pursuant to, such a[n illegal] contract. If so, the rights of the owner of the legal title thereby acquire will be enforced, provided that the plaintiff can establish such title without pleading or leading evidence of the illegality..."

"...A party to an illegality can recover by virtue of a legal or equitable property interest if, but only if, he can establish his title without relying on his own illegality..."

"...In a case where the plaintiff is not seeking to enforce an unlawful contract but founds his case on collateral rights acquired under the contract(such as a right of property) the court is neither bound nor entitled to reject the claim unless the illegality of necessity forms part of the plaintiff's case." The House in Tinsley v. Milligan did not lay down a universal test of ex turpi causa. It was dealing with the effect of illegality on title to property. It established the general principle that, once title has passed, it cannot be attacked on the basis that it passed pursuant to an illegal transaction. If the title can be asserted without reliance on the illegality, the defendant cannot rely on the illegality to defeat the title."

13. Mr. Arguelles submits that the Claimant Zhou Zhi Wei is using the dishonoured cheques given to him by the Defendants as the basis of his claim, therefore he does not need to, and is not, relying on any illegality to found his case. Moreover, he argues that the Defendants have not made out their case of illegality in that they have merely made allegations without

tendering any proof. Their witnesses are not credible, they have admitted to assisting in illegality and are therefore of bad character and their testimonies ought not to be believed.

Mr. Arguelles further submits that the Claimant's Case is founded on independent collateral rights from the dishonoured cheques issued to him by the Defendants. A cheque is a sacred document that should not be easily nullified resulting in the most fundamental basis of commerce being undermined; otherwise anyone can assert, despite acknowledging its written form, that it is not good because of a particular reason.

He relies on Lord Jauncey in *Hniazdilau v. Vaijel et al.* [2016] EWHC 15 where after reviewing the authorities His Lordship expounded these three principles:

"At the outset it seems to me to be important to distinguish between the enforcement of executor provisions arising under an illegal contract or other transaction and the enforcement of rights already acquired under the completed provisions of such a contract or transaction.

First it is trite law that the court will not give its assistance to the enforcement of executory provisions of an unlawful contract whether the illegality is apparent ex facie the document or whether the illegality of purpose of what would otherwise be a lawful contract emerges during the course of the trial: Holman v. Johnson 1 Cowp. 341 343 per Lord Mansfield C.J.; Pearce v. Brooks (1866) L.R. 1 Ex 213, 217-218, per Pollock C.B.: Alexander v. Rayson [1936] 1KB 169, 182: Bowmakers Ltd. v. Barnet Instruments Ltd. [1945] KB 65, 70.

Second, it is well established that a party is not entitled to rely on his own fraud or illegality in order to assist a claim or rebut a presumption. Thus when money or property has been transferred by a man to his wife or children for the purpose of defrauding creditors and the transferee resists his claim for recovery, he cannot be heard to rely on his illegal purpose in order to rebut the presumption of

advancement. Gascoigne v. Gascoigne [1918] 1 KB 223, 226; Palaniappa Chettiar v Arunasalam Chettiar [1962]AC 294, 302; Tinker v Tinker [1970] P. 136, 143.

Third, it has however, for some years been recognized that a completely executed transfer of property or of an interest in property made in pursuance of an unlawful agreement is valid and the court will assist the transferee in the protection of his interest provided that he does not require to found on the unlawful agreement. Ayerst v Jenkins LR 16 Eq. 275,283; Alexander v. Rayson [1936] 1 KB 169, 184-185; Bowmakers Ltd. v Barnet Instruments Ltd. [1945] KB 65 and Singh v. Ali [1960] AC 167, 176.”

Lord Brown Wilkinson in *Tinsley v. Mulligan supra*. states as follows:

“...In my judgment the court is only entitled and bound to dismiss a claim on the basis that it is founded on an illegality in those cases where the illegality is of a kind which could have provided a good defence if raised by the defendants. In a case where the plaintiff is not seeking to enforce an unlawful contract but founds his case on collateral rights acquired under the contract (such as a right of property) the court is neither bound nor entitled to reject the claim unless the illegality of necessity forms part of the plaintiff’s case.”

Mr. Arguelles submits that in light of the evidence put forth by the Claimant, and the fact that the Defendants’ witnesses and they themselves lack credibility, it is the Claimant’s submission that the Defendants’ evidence ought not to be believed and relied on. The Defendants rely on illegality to succeed and they have not discharged the legal burden of proving any illegal purpose; moreover, the Claimant has provided evidence of a perfectly legal and enforceable contract, i.e., evidenced by the presentment of cheques signed by the Defendants.

Even if said illegal intention was proved, the Claimant humbly submits, that to found his case he does not need to rely on said illegality, he relies solely on the sanctity of cheques as negotiable instruments similar to money had and received which is fungible. The Claimant relies on the independence and the collateral fact that a cheque is a separate chose of action. The Claims should therefore be allowed and relief sought should be granted to the Claimant based on the evidence.

Legal Submissions made on behalf of The Defendants

14. Mrs. Segura-Gillett argues on behalf of the Defendants that answer to the question *“whether the dishonored cheques were paid to the Defendants to the Claimant pursuant to an illegal boledo transaction or whether they were paid pursuant to a lawful and enforceable contract”* lies in the evidence. Learned Counsel then highlights several portions of the evidence which she says establishes this first issue. These include the following:

Sarika Sadarangani gave evidence that she was introduced to the Claimant by her uncle Prakash “Peter” Gianchandani. She had been told about the illegal boledo scheme operated by the Claimant. This scheme was not part of the license boledo scheme operated by the Claimant in which tickets were issued upon purchase and wherein the buyer was limited as to the quantity of a number that he/she could buy.

[Paras. 4-6 of Witness Statement of Sarika Sadarangani]

Initially Sarika would go to the Claimant’s store and write her numbers in the Claimant’s book with a carbon inside. The Claimant would sign off on the list and give Sarika the carbon copy of list of numbers. Sarika would pay the Claimant for half

the numbers she bought and the Claimant would give her the remainder on credit.

[Paras. 8 & 9 of Witness Statement of Sarika Sadarangani]

As the relationship between the parties solidified, Sarika started sending her list of numbers with other individuals. At times she would send two copies of her list and at times she would send only one copy and the Claimant would photocopy it on his fax machine. [Para. 12 & 13 of Witness Statement of Sarika Sadarangani]

At times the Claimant requested cheques from her to secure her wagers. When Sarika was not around, she would ask her mother to issue a cheque on her behalf to the Claimant. It was at all times agreed between the Claimant and Sarika that the cheques were only to secure her wager and were not to be negotiated otherwise by the Claimant. [Paras. 17 & 18 of Witness Statement of Sarika Sadarangani]

15. Mrs. Segura-Gillett submits that the evidence of Sarika Sadarangani is corroborated by four witnesses. She highlights many sections of the evidence, including:

Witness Peter "Prakash" Gianchandani testified that the Claimant sold "black market" boledo and that his niece, Sarika Sadarangani, bought large quantities of boledo from William. He further testified that he would at times deliver Sarika's list to the Claimant and that the Claimant kept a book where he recorded Sarika's purchases and losses. Peter categorically denies that the Claimant loaned monies to the Defendants. [Paras. 3 & 4 of the Witness Statement of Peter "Prakash" Gianchandani]

Witness Sabrina Stuart an employee of Doonys testified that the Claimant sold boledo to Sarika and that she at times accompanied Sarika when she went to buy from the Claimant. Sabrina further testifies that later on Sarika would send her alone to deliver her list of numbers to the Claimant. [Paras. 2 & 3of Witness statement of Sabrina Stuart]

Witness George Abraham, former employee of Doonys, testified that he accompanied Sarika to the Claimant's store to buy boledo and also took lists of numbers to the Claimant on Sarika's behalf. He described Sarika as a "big buyer" of boledo. When she lost she lost big, and when she won she won big. [Paras. 3 & 4 of the Witness Statement of George Abraham]

Witness Veena Sadarangani testified that she wrote cheques on her daughter's behalf to the Claimant. She said she always understood that the cheques were simply to secure that Sarika would pay the Claimant at a later date.[Paras.5 & 6 of the Witness Statement of Veena Sadarangani]

16. Mrs. Segura-Gillett then points out that the Claimant's evidence was vague, inconsistent and wholly incredulous and she illustrates this by emphasizing several portions of the evidence including the following:

The Claimant said that "the First and Second Defendant would require cash and I would front them the money at two separate rates, 5% if the cheque was post-dated and 2% if the cheque was dated the actual day the First and Second Defendant received the money. This meant for example that if they wanted money, she would give me a cheque

for \$10,000.00 and if post-dated, I would give her \$10,000.00 less 5% and that is how I made a profit. Each cheque acted as a guarantee/security.” [Para.17 of Witness Statement of Zhou Zhi Wei]

Mrs. Segura Gillett submits that these transactions described by the Claimant made absolutely no sense when the Defendants could easily cash the cheques at a bank. The 2% scheme alleged by the Claimant gave the Defendants no practical benefit and cost them 2% of the value of the cheque. Furthermore, the Claimant provides no proof of the alleged loans nor of the source of the funds for said loans. When asked how he amassed \$30,000.00 cash to loan to the Defendants in one transaction, he said he got it from his friends. None of these friends were called to testify. The promissory note produced by the Claimant further highlights the nonsensical nature of transactions alleged by the Claimant. The note states it is for the value of \$250,000.00 on its face, yet alleges that the sum actually owed by the Defendants is \$600,000.00. The cheques presented by the Claimant in court total \$120,000.00 which is far less than either of these two amounts. Mrs. Segura-Gillett submits that these are major inconsistencies and flaws in the Claimant’s case which raise more questions than answers, and should not be accepted as true by the court.

17. On the second issue as to whether the Claimant is entitled to recover the sums set out in the alleged dishonoured cheques from the Defendant, Mrs. Segura-Gillett says that it is an established principle of law that the Courts will not enforce contracts which are contrary to statutory provisions or common law principles as such contracts will be

deemed illegal and unenforceable. The boledo scheme that the Claimant operated was contrary to Section 3 of the Lotteries Act since the Claimant did not have a license to operate any such lottery. The transaction between the parties is tainted with illegality and should not be enforced by any court of law. The maxim *'in pari delicto potiores condition possidentis'* operates to prevent the Claimant from recovering any money from his illegal contract. The maxim *"exturpicausa non oritur action"* also applies in this instance to prevent him from benefitting from his own wrongful act.

Mrs. Segura Gillett argues that since the cheques are tainted by the illegality of the contract pursuant to which they were paid, the Claimant's claim must fail. She contends that allowing the Claimant to succeed on this claim would be tantamount to allowing a hitman to sue on a dishonoured cheque paid pursuant to a contract killing. She submits that there is no doubt that it is unlawful for a person to conduct a lottery without a license to do so. Learned Counsel cites the Lotteries Control Act Section 3:

"(1) No person shall promote, hold, or conduct any lottery unless he obtains a license so to do in accordance with this Act and in such manner and in compliance with such conditions as may be prescribed by the Committee."

(2) No person shall in any way assist in promoting, holding, or conducting a lottery by sale or printing tickets...or by any other means whatever unless and until he has been appointed as an agent of the person licensed to promote, hold or conduct such lottery."

Mrs. Segura-Gillett then cites *Halsbury's Laws of England* Fourth Edition Volume 9 as authority for her submission that a Plaintiff cannot enforce a contract founded on an illegality:

“Contracts declared void by statute. In certain cases, no question of illegality strictly so-called arises but statute declares the contract to be void. Examples of such provisions are:

2) Contracts by way of gaming and wagering. Further a promise to pay a person any sum of money paid by him under or in respect of any such contract, or to pay any sum by way of commission, fee, reward, or otherwise in respect of any such contract, or of any services in relation to or in connection with such a contract, is also void.”

At para 422 of Halsbury’s Laws of England:

*“422. There are two general principles. **The first is that a contract which is entered into with the object of committing an illegal act is unenforceable.** The application of this principle depends upon proof of the intent, at the time the contract was made, to break the law; if the intent is mutual the contract is not enforceable at all, and if unilateral, it is unenforceable at the suit of the party which is proved to have the intent. **The second principle is that the court will not enforce a contract which is expressly or impliedly prohibited by statute.** If the contract is of this class it does not matter what the intent of the parties is. If the statute prohibits the contract, it is unenforceable whether the parties meant to break the law or not.” (emphasis mine)*

And at para. 431 of Halbury’s Laws of England:

*“431. A contract or security **not in itself illegal** will be tainted with illegality and hence be unenforceable if it is founded upon another illegal contract. Thus, the following contracts or securities have been held unenforceable; a bond given in consideration of future illicit cohabitation; a deed given as security for payment of the purchase price of land conveyed for an illegal purpose; a bank note given*

by way of a pledge to secure payment for a debauch in a brothel.” (emphasis mine)

Decision

18. I am most grateful to counsel for the Claimant and the Defendant for their cogent and comprehensive arguments which have been of invaluable assistance in helping this court to decide this matter. Mr. Arguelles presents a very compelling argument on behalf of the Claimant. He says that the cheques given by the Defendants to the Claimant are negotiable instruments which stand alone and are not dependent on any contract (illegal or otherwise) for their validity. He further argues that the Defendants case is incredulous and should be disregarded by the court. However, even if the court is minded to accept the Defendant’s argument that the cheques were part of an illegal gambling contract between the parties, this should not prevent the court from ordering the Defendants to honor those cheques. It is not the Claimant who seeks to rely on the illegal contract, but the Defendants, and they should not be allowed to shirk their financial obligations to the Claimant which arose when they issued those cheques to him. The cheques are independent and they should be honored by the Defendants.

As attractive as those arguments sound, I respectfully disagree with the submissions of Mr. Arguelles. I have found, based on all the evidence before me, on a balance of probabilities, that the Claimant and the Defendants were involved in buying and selling black market boledo. I do not believe the evidence of the Claimant at all. I find his evidence that these transactions involving cheques were loans issued to the Defendants to be totally lacking credibility. No businessman in his right mind would continue to

accept different cheques valued at several thousands of dollars amounting to \$125,000.00 when those cheques keep bouncing like rubber balls whenever he sought to cash them at the bank. His explanation defies logic and common sense. I believe the evidence of the Defendants and their witnesses, including Sarika Sadarangani's list of numbers tendered into evidence which are filled with boledo numbers, value of the wager, and the Claimant's signature as "Exhibit PG 1". Having so found, I find that such behavior is contrary to the express provisions of the Lotteries Control Act Cap of the Laws of Belize Section 3. While it is true that in general cheques are independent negotiable instruments which should be honored by their maker, in this particular case, these cheques did not exist in a vacuum; these cheques were issued by the Defendants to the Claimant pursuant to an illegal gambling enterprise. The cheques are therefore inextricably bound to the illegal contract, and this court will not allow itself to be used by any party to facilitate the proceeds of crime. This is also a matter of public policy, and I am of the view that the court must never allow itself to even appear to encourage criminal behavior. I am minded of the following passage from *Nayvar v. Wilde* [2009] EWHC 3218 (QB) aptly cited by Mrs. Segura Gillett in her submissions:

"The maxim ex turpi causa non oritur actio ('ex turpi causa') is a principle that prevents a Claimant from using the court to obtain benefits from his own wrongful conduct. The policy underlying ex turpi causa was explained by Lord Mansfield CJ in Holman v Johnson 1 Cowp 341, 343:

*'The objection, that a contract is immoral or illegal as between plaintiff and defendant, sounds at all times very ill in the mouth of the defendant. **It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy, which the defendant has advantage of, contrary to***

real justice, as between him and the plaintiff, by accident, if I may so say. The principle of public policy is this; ex dolo malo non oritur actio. No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act...'

Nayvar V Denton Wilde Sapte further cites the Court of Appeal decision in Cross v Kirby The Times, April 5, 2000. In that case Beldam LJ stated (para 77):

*'I do not believe that there is any general principle that the Claimant must either plead, give evidence of or rely on his own illegality for the principle to apply. **Such a technical approach is entirely absent from Lord Mansfield's exposition of the principle.** I would, however, accept that for the principle to operate, the claim made by the Claimant must arise **out of criminal or illegal conduct on his part.** In this context 'arise out of' clearly denotes a causal connection with the conduct... In my view the principle applies when the Claimant's claim is so closely connected or inextricably bound up with his own criminal or illegal conduct that the court could not permit him to recover without appearing to condone that conduct.'*"

I echo this view of the principle of the law propounded by Beldam LJ.

The claim is dismissed. Each party to bear own costs.

Dated this Thursday, 15th day of June, 2017

**Michelle Arana
Supreme Court Judge**