

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL LIST

No. 2075 of 2001
Folio. 5341

B E T W E E N

WU GUO WEI

Plaintiff

- and

CROWN LIMITED (A.C.N 006 973 262)

Defendant

**AMENDED STATEMENT OF CLAIM AMENDED BY ORDER OF THE
HONOURABLE JUSTICE WARREN MADE 2 NOVEMBER, 2001**

Date of Document:	<u>02 November, 2001</u>
Filed on behalf of:	The Plaintiff
Prepared by:	
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1. The Plaintiff is:
 - (a) a resident of Singapore; and
 - (b) a non-English speaker.
2. The Defendant:
 - (a) is a company incorporated under the *Corporations Law*;

- (b) is a trading corporation formed within the limits of Australia and engaged in trade or commerce within the meaning of the *Trade Practices Act 1974* (Cth);
- (c) is capable of being sued; and
- (d) operates and at all relevant times has operated the Crown Casino at Southbank, Melbourne.

Background Facts

3. In or about September 2000 the Plaintiff joined a tour (a “**Junket**”) to Crown Casino at Southbank Melbourne organised by Ms Jia Feng Chen also known as Catherine Chen (“**Chen**”).

Particulars

In or about the third week of September 2000, the Plaintiff travelled with his wife and friends from the People’s Republic of China to Sydney for the Olympic Games. Whilst gambling at Star City Casino in Sydney in or about the third week of September 2000, Chen orally offered to accompany the Plaintiff to Melbourne with a view to organising a Junket with the Plaintiff as a member of the Junket.

4. In implementation of the Junket:
 - (a) the Plaintiff travelled from Sydney to Melbourne on 26 September 2000 with Chen and Chen’s husband ,Jin Li;
 - (b) the Plaintiff, Chen and Chen’s husband were met in a stretch limousine at Tullamarine Airport on 26 September 2000 by a representative of the Defendant and were met by Mr Boo A Khoo, Mahogany Room Service Manager upon arrival at the hotel lobby of the Casino; and

- (c) after checking into complimentary accommodation at Crown Casino, the Plaintiff accompanied Chen to the Mahogany Room at the Casino.

Contract between the Plaintiff and the Defendant

- 5. On 26 September 2000 an agreement was entered into between the Plaintiff and the Defendant ("**the Contract**").

Particulars

The Contract was oral and to be implied. In so far as it was oral it was constituted by a conversation between Mr Khoo and the Plaintiff in the Mahogany Room on 26 September 2000. In so far as it was implied, it was implied in order to give business efficacy to the contract and by law.

- 6. There were terms of the Contract, inter alia, that:
 - (a) the Plaintiff would lodge with the Defendant the sum of A\$500,000 before the Plaintiff commenced to play at Crown Casino ("**front money**").
 - (b) the front money would be provided by way of the Plaintiff endorsing over to the Defendant a cheque issued by Star City Casino in the name of the Plaintiff for A\$500,000;
 - (c) the front money would be maintained by the Defendant in a separate fund or account in the name of Chen ("**Chen's Account**");
 - (d) in consideration of the lodgement of the front money the Plaintiff would be issued with chips for playing games at Crown Casino;
 - (e) the Plaintiff's gambling profits and losses would be recorded through Chen's Account;

- (f) when the Plaintiff completed his gambling, the Defendant would redeem the value of chips then held by the Plaintiff upon presentation by the Plaintiff of the chips, and pay those funds to the Plaintiff; and
- (g) instructions given by the Plaintiff as to the disbursement of funds held in Chen's Account for the benefit of the Plaintiff would not be countermanded without the authority of the Plaintiff.

Particulars

The terms were oral and to be implied. Terms (a) to (f) were oral and constituted by the conversation between Khoo and the Plaintiff in the Mahogany Room on 26 September 2000 where Mr Khoo said to the Plaintiff words to the effect alleged.

Terms (f) and (g) are implied by law (including by s 64(g)(iii) of the *Casino Control Act 1991* (Vic)) and/or to give business efficacy to the Contract.

7. In performance of the Contract;

- (a) the Plaintiff lodged with the Defendant the front money by way of the Plaintiff endorsing over to Crown a cheque issued by Star City Casino in the name of the Plaintiff for A\$500,000;

Particulars

The cheque was accepted by Mr Khoo in the Mahogany Room on the evening of 26 September 2000;

- (b) the front money was paid by the Defendant into Chen's Account;

Particulars

Particulars will be provided after discovery.

- (c) the Plaintiff was issued with five "high roller" chips each for A\$100,000;

Particulars

The chips were handed to Chen by Mr Khoo in the Mahogany Room on the evening of 26 September 2000 and Chen immediately handed them to the Plaintiff;

- (d) the Plaintiff's gambling profits and losses were recorded through Chen's Account;

Particulars

Particulars will be provided after discovery.

8. During the period between 26 September and 29 September 2000 the Plaintiff played baccarat in the Mahogany Room.
9. When the Plaintiff finished playing baccarat on the morning of 29 September 2000, the Plaintiff had accumulated two "high roller" chips, one for \$1 million and one for A\$100,000, representing his original front money of A\$500,000 and a profit of A\$600,000.
10. At or about 1pm on 29 September 2000, the Plaintiff instructed the Defendant to redeem the value of his high roller chips by:
 - (a) issuing the Plaintiff with a cheque made payable to the Plaintiff in the amount of A\$300,000; and
 - (b) converting the balance, being A\$800,000 ("**the Balance**") to US dollars and remitting the Balance to the Plaintiff's US dollar account with Merrill Lynch International Bank ("**Merrill Lynch**") in Singapore ("**the Instructions**").

Particulars

The Instructions were oral. When the Plaintiff finished playing, he and Chen proceeded to the VIP Cage within the Mahogany Room. The

Plaintiff sat at a table with two Asian Mandarin speaking managers of Crown Casino, one of whom spoke Mandarin with a Cantonese accent. The manager with the Cantonese accent said to the Plaintiff words to the effect "how do you want to take your money?". The Plaintiff said, in Mandarin, words to the effect that he would like the Defendant to convert the \$800,000 to US dollars and then remit the funds to the Plaintiff's US dollar account maintained with Merrill Lynch in Singapore. With the two Asian managers acting as interpreters, an English speaking cashier of the Defendant informed the Plaintiff that the Defendant already had details of his US dollar account from his previous visits to the Casino. The cashier said to the Plaintiff words to the effect that the Defendant would remit the funds by the following day at the latest.

11. On the morning of 29 September 2000 and in response to the Instructions:
 - (a) the Defendant provided the Plaintiff with a cheque made payable to the Plaintiff in the amount of A\$300,000.
 - (b) a cashier of the Defendant completed a telegraphic transfer request form reflecting the Instructions, in order to transfer the Balance to the Plaintiff's US dollar account with Merrill Lynch in Singapore;
 - (c) the telegraphic transfer request form was signed on the Plaintiff's behalf by Chen; and
 - (d) the Defendant issued Chen with receipts purporting to show the transfer of the Plaintiff's funds to the Plaintiff.

Particulars

The Plaintiff was not given a copy of the telegraphic transfer request form referred to in paragraph (b) above. The receipts issued by the Defendant to Chen and referred to in paragraph (d) were:

- (a) a receipt issued at 1.31 pm on 29 September 2000 showing a withdrawal from Chen's Account for the cheque for A\$300,000 together with cash representing the Plaintiff's share of the commission Chen was apparently entitled to under a junket arrangement with the Defendant; and

- (b) a receipt issued at 1.55 pm on 29 September 2000 purporting to show a telegraphic transfer of the Balance from Chen's account. Copies of these receipts are available for inspection at the offices of the solicitors for the Plaintiff.

Further particulars will be provided after discovery.

12. In breach of the Contract, the Defendant has:

- (a) failed to pay to the Plaintiff the Balance by way of converting it to US dollars and remitting the funds to Merrill Lynch Singapore in accordance with the Instructions, or otherwise; and
- (b) allowed the Plaintiff's instructions to be countermanded by Chen without the authority of the Plaintiff.

Particulars

As to paragraph (b) the Plaintiff will say that on 25 November 2000 he travelled to Melbourne and met with Mr Khoo at Crown Casino. The Plaintiff went to the Mahogany Room with Mr Khoo and Mr Khoo switched on a lap-top computer. The Plaintiff had with him three friends, Jiang Sun, Ke Su and Guo Xiang Ni. Mr Khoo showed the Plaintiff and his friends on the computer screen the following entries:

- (a) on 29 or 30 September 2000 Crown had purchased US dollars with what appeared to be the Plaintiff's A\$800,000;
- (b) on 4 October 2000 Crown converted the US dollars back to about \$804,000;
- (c) the amount of about A\$804,000 was deposited into Chen's Account on 4 October 2000;
- (d) on 4 October 2000 Chen's Account had been depleted by A\$1.35 million; and
- (e) on 4 October 2000 Crown lent Chen A\$200,000 to enable her or a person betting on her account to continue to bet.

Mr Khoo told the Plaintiff that the amount depleted in Chen's Account had been lost by Chen at the Casino. Later on in the evening of 4 October 2000, the Plaintiff spoke with Mr Enrico Dovadola, the Vice President of the Mahogany Room. Through

an interpreter, Mr Dovadola said words to the effect that "it was not our mistake. Chen told us not to remit the money to you because you were returning". Further particulars will be provided after discovery.

13. By letters dated 12 December 2000 and 20 March 2001, the Plaintiff demanded that the Defendant pay to the Plaintiff the sum of A\$800,000.

Particulars

Copies of the letters are available for inspection at the offices of the solicitors for the Plaintiff.

14. As a result of the Defendant's breach of the Contract, the Plaintiff has suffered loss and damage.

Particulars

The amount of A\$800,000, or alternatively the US dollar equivalent of A\$800,000 on 29 September 2000.

Negligence

15. Section 64(g)(iii) of the *Casino Control Act 1991* (Vic) provides that:

"Chips, or chip purchase vouchers, issued by the Casino operator, must be redeemed (for a value equivalent to their value) for money or, at the option of the operator, for a cheque payable to the patron".

16. As a result of:

- (a) section 64(g)(iii) of the *Casino Control Act 1991* (Vic); and
- (b) the relationship between the Plaintiff and the Defendant,

at all material times the Defendant knew or ought to have known and reasonably foreseen that the Plaintiff would depend on the Defendant to ensure that the Instructions were carried out.

17. By virtue of the negligence of the Defendant and/or its servants or agents, the Plaintiff's Instructions were not carried out.

Particulars

The Defendant failed to convert the Balance to US dollars and remit the funds to Merrill Lynch Singapore, or otherwise pay the Balance to the Plaintiff.

18. As a result of the Defendant's negligence the Plaintiff has suffered loss and damage.

Particulars

The Plaintiff refers to and repeats the particulars subjoined to paragraph 14 above.

Breach of statutory duty

19. By virtue of s 64(g)(iii) of the *Casino Control Act* 1991 (Vic) referred to in paragraph 15 above, the Defendant owed a statutory duty to the Plaintiff to redeem for money or, at the option of the Defendant for a cheque payable to the Plaintiff, the high roller chips issued by the Defendant, held by the Plaintiff and bearing a face value of A\$1.1 million.
20. At the option of the Defendant, on or about 29 September 2000 the Defendant issued to the Plaintiff a cheque in the amount of A\$300,000.
21. In breach of its statutory duty, the Defendant has failed to pay to the Plaintiff the Balance.

22. As a result of the Defendant's breach of its statutory duty, the Plaintiff has suffered loss and damage.

Particulars

The Plaintiff refers to and repeats the particulars to paragraph 14 above.

Misleading and deceptive conduct

23. On 29 September 2000, the Defendant represented to the Plaintiff that it would remit the Balance which stood to the credit of Chen's Account, to his US dollar account with Merrill Lynch in Singapore in accordance with the Instructions (**"the First Representation"**).

Particulars

The Plaintiff refers to and repeats paragraphs 10 and 11 above and the particulars subjoined thereto.

24. The First Representation was made in trade or commerce within the meaning of the *Trade Practices Act*.
25. The First Representation was misleading and deceptive within the meaning of s 52 of the *Trade Practices Act*.

Particulars

At the option of the Defendant, on 29 September 2000 the Defendant issued to the Plaintiff a cheque in the amount of \$300,000 but the Defendant failed to convert the Balance to US dollars and remit the funds to the Plaintiff's US dollar account with Merrill Lynch in Singapore in accordance with the Plaintiff's instructions.

26. Further or alternatively the First Representation was a representation in respect of a future matter within the meaning of s 51A of the *Trade Practices Act*.
27. In reliance upon the First Representation the Plaintiff:
- (a) refrained from requiring immediate payment of the Balance; and
 - (b) left Crown Casino to catch a 3.00 pm flight to Brisbane on 29 September 2000.
28. As a result of the misleading and deceptive conduct of the Defendant, the Plaintiff has suffered loss and damage.

Particulars

- (a)—The Plaintiff refers to and repeats the particulars to paragraph 14 above.
29. On a previous visit to Crown Casino ("**Crown**") in or about 16 May 2000 the Plaintiff completed a telegraphic transfer request form requiring Crown to transfer \$100,000, being the redemption of his chips, converted to US dollars to:

"North Trust International Banking Corporation
World Trade Centre New York, NY 10048

ABA Code 112 for credit Merrill Lynch Pierce Fenner & Smith in fav sub
account

Bank Account name: Wu Guo Wei BSB: 132340 Account No. 142-20768"

Particulars

A copy of the telegraph transfer request form is available for inspection at the offices of the solicitors for the Plaintiff by prior appointment.

30. The sum of \$100,000 converted to US dollars was transferred by the Defendant to the Plaintiff's bank account referred to in paragraph 29 on or about 17 May 2000.
31. Further or alternatively, on 29 September 2000 the Defendant represented to the Plaintiff that it had the necessary details of the Plaintiff's US dollar bank account from his previous visit to Crown ("the Second Misrepresentation").

Particulars

With two Asian managers acting as interpreters an English speaking cashier of the Defendant informed the Plaintiff that the Defendant already had details of his US dollar account from his previous visit to Crown.

32. If (which is denied) the Defendant did not have the necessary details of the Plaintiff's US dollar bank account by making the Second Misrepresentation the Defendant made a misrepresentation in trade or commerce which was misleading and deceptive within the meaning of s.52 of the Trade Practices Act.
33. Further or alternatively, the Second Misrepresentation was a representation in respect of a future matter within the meaning of s 51A of the *Trade Practices Act*.
34. In reliance upon the Second Misrepresentation the Plaintiff:
 - (i) refrained from acquiring immediate payment of the Balance; and
 - (ii) left Crown Casino to catch a 3 p.m. flight to Brisbane on 29 September 2000.

35. As a result of the misleading and deceptive conduct of the Defendant, the Plaintiff has suffered loss and damage.

Particulars

The plaintiff refers to and repeats the particulars to paragraph 14 above.

Constructive trust: knowing involvement in breach of duty by Chen

36. The Plaintiff's winnings represented by A\$1.1 million and deposited into Chen's Account were held by Chen as trustee for, or otherwise for the benefit of, the Plaintiff.
37. In breach of her obligations to the Plaintiff, Chen allowed the \$800,000 belonging to the Plaintiff to be gambled at Crown Casino during the period on or about 29 September to 4 7 October 2000.

Particulars

The Plaintiff will say that on 25 November 2000 he travelled to Melbourne and met with Mr Khoo at Crown Casino. The Plaintiff went to the Mahogany Room with Mr Khoo and Mr Khoo switched on a lap-top computer. The Plaintiff had with him three friends, Jiang Sun, Ke Su and Guo Xiang Ni. Mr Khoo showed the Plaintiff and his friends on the computer screen the following entries:

- (a) on 29 or 30 September 2000 Crown had purchased US dollars with what appeared to be the Plaintiff's A\$800,000;
- (b) on 4 October 2000 Crown converted the US dollars back to about \$804,000;
- (c) the amount of about A\$804,000 was deposited into Chen's Account on 4 October 2000;
- (d) on 4 October 2000 Chen's Account had been depleted by A\$1.35 million; and
- (e) on 4 October 2000 Crown lent Chen A\$200,000 to enable her or a person betting on her account to continue to bet.

Mr Khoo told the Plaintiff that the amount depleted in Chen's Account had been lost by Chen at the Casino. Later on in the evening of ~~4 October~~ 25 November 2000, the Plaintiff spoke with Mr Enrico Dovadola, the Vice President of the Mahogany Room. Through an interpreter, Mr Dovadola said words to the effect that "it was not our mistake. Chen told us not to remit the money to you because you were returning". Further particulars will be provided after discovery.

38. As a result of the matters referred to in paragraphs 10, 11 and 36, the

Defendant:

- (a) knew;
- (b) had a reckless disregard for the obvious consequence of known facts; or
- (c) had reason to know;

that Chen was misapplying and did misapply the Plaintiff's money, being the Balance.

Particulars

The knowledge of the Defendant can be inferred from the Plaintiff's Instructions, the maintenance by the Plaintiff of Chen's Account and the authorising by the Plaintiff of transactions on Chen's Account.

39. The Defendant has gained a lasting benefit from the misuse of the Plaintiff's money through the monies being gambled at Crown Casino.

Particulars

The Plaintiff refers to the particulars to paragraph 30. Further particulars will be provided after discovery.

40. As a result of the matters referred to in paragraphs 36 - 39 the Defendant is liable to the Plaintiff as a constructive trustee within the first limb of *Barnes v Addy* (1874) LR 9 Ch App 244.
41. As a result of the matters referred to in paragraphs 36 to 40 the Plaintiff has suffered loss and damage.

Particulars

The Plaintiff refers to the particulars subjoined to paragraph 14 above.

42. Further and alternatively, if (which is denied) the Defendant did not obtain a lasting benefit from the misuse of the Plaintiff's money, being the Balance, the Defendant:

- (a) knew that Chen or someone using Chen's Account had misapplied the plaintiff's money; or
- (b) had a reckless disregard for the obvious consequences of known facts, (being the misuse of the Plaintiff's money by Chen or someone using Chen's Account),

and the Defendant has therefore knowingly ~~and dishonestly~~ assisted in the misappropriation of the Plaintiff's money or had reason to know of the misappropriation of the Plaintiff's money.

43. As a result of the matters referred to in paragraph 42 the Defendant is liable to the Plaintiff within the second limb of *Barnes v Addy* (1874) LR 9 Ch App 244.
44. As a result of the matters referred to in paragraphs 42 and 43 the Plaintiff has suffered loss and damage.

Particulars

The Plaintiff refers to the particulars subjoined to paragraph 14. above.

AND THE PLAINTIFF CLAIMS

- A. The sum of A\$800,000, or at the Plaintiff's option the US dollar equivalent of \$800,000 as at 29 September 2000.
- B. Alternatively, damages at common law (for breach of contract, or alternatively damages for negligence and/or breach of statutory duty).
- C. Alternatively damages pursuant to s 82 of the *Trade Practices Act*.
- D. Costs.
- E. Interest pursuant to statute.
- F. Such further or other orders and relief as the Court deems fit.

Dated: 02 November, 2001

PHILIP CRUTCHFIELD
Counsel for the Plaintiff

CHARLES FICE
Solicitors for the Plaintiff