



HIGH COURT OF AUSTRALIA

16 October 2024

SKYCITY ADELAIDE PTY LTD v TREASURER OF SOUTH AUSTRALIA & ANOR
[2024] HCA 37

Today, the High Court unanimously dismissed an appeal, granted special leave to cross-appeal and allowed the cross-appeal from a decision of the Court of Appeal of the Supreme Court of South Australia answering questions of law referred for its consideration in a proceeding brought in the Supreme Court by SkyCity Adelaide Pty Ltd ("SkyCity") against the Treasurer and State of South Australia (together "the State"). The proceeding arose out of a dispute between SkyCity and the State concerning the liability of SkyCity to pay casino duty and interest for late payment of casino duty under the *Casino Act 1997* (SA) ("the Casino Act") in accordance with the Casino Duty Agreement entered into between SkyCity and the Treasurer on 27 October 1999 and most recently varied on 23 June 2020 (the "CDA").

On 14 February 2014, SkyCity commenced operating electronic gaming machines ("EGMs") and automated table games ("ATGs"). EGMs and ATGs allowed customers to place bets by wagering electronic gaming credits, which can be purchased by Members (customers over the age of 18). Under SkyCity's "Rewards Program", Members received loyalty points by reference to their gambling and other expenditure as well as on a discretionary basis. By inserting their membership card into an EGM or an ATG, a Member could "convert" accumulated points into electronic gaming credits on the machine, provided that the Member passed through the "gate" of wagering electronic gaming credits to an amount equal in value to the points to be converted on the day of conversion. These "converted credits" are indistinguishable from credits purchased by customers from their own funds. A Member then had two options: (1) to redeem the converted credits for cash (up to a specified monetary threshold and subject to a three-year forfeiture period); or (2) to use the converted credits to bet on an EGM or an ATG.

Clause 5 of the CDA provides that "[t]he Licensee must pay casino duty in respect of net gambling revenue for a financial year". Clause 1.1 of the CDA defines "net gambling revenue" in respect of gambling for a period to refer to "gross gambling revenue", and relevantly defines "gross gambling revenue" for a period to mean the "amount received ... for or in respect of consideration for gambling". The ultimate issue in the appeal was whether the Court of Appeal was correct to conclude that converted credits, when used by a Member to bet on an EGM or an ATG, constituted an "amount received" by SkyCity "for or in respect of consideration for gambling". Section 51(1) of the Casino Act provides that "[t]he licensee must pay casino duty (and interest and penalties for late payment or non-payment of casino duty) in accordance with the [CDA]". The ultimate issue in the cross-appeal was whether the Court of Appeal was correct to conclude that the obligation of SkyCity under cl 11 of the CDA to pay interest for late payment of casino duty at 20% per annum could be the subject of relief against enforcement if that obligation to pay interest could properly be characterised as a penalty at common law or in equity.

In dismissing the appeal the High Court concluded that the reasoning of the Court of Appeal was sound and dispositive in determining that the focus of the definition of "gross gambling revenue" is on amounts received as consideration for the playing of a game. Each time a Member used electronic gaming credits to bet on an EGM or ATG, monetary value has been received by SkyCity as consideration for its acceptance of that bet. Granting special leave to cross-appeal and allowing the cross-appeal, the High Court concluded that the Court of Appeal's reasoning inverted the scheme of the Casino Act. By providing that the CDA operates as a deed, s 17(4) takes an agreement that would not be enforceable at common law or in equity and makes it so.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.