



HIGH COURT OF AUSTRALIA

5 June 2013

KAKAVAS v CROWN MELBOURNE LIMITED (ACN 006 973 262) & ORS
[2013] HCA 25

Today the High Court unanimously dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of Victoria, which held that Crown Melbourne Limited ("Crown") did not act unconscionably in allowing the appellant to gamble and lose large sums of money at its casino.

The appellant was a high-stakes gambler and regular patron of Crown's casino. Between June 2005 and August 2006, he turned over \$1.479 billion playing baccarat at the casino. He brought a claim to recover his net loss of \$20.5 million over that period.

The appellant issued proceedings against Crown and two of its employees in the Supreme Court of Victoria, claiming that they had engaged in unconscionable conduct contrary to s 51AA of the *Trade Practices Act 1974* (Cth) and under the general law. At trial, the appellant alleged that Crown had lured him, a known problem gambler, to gamble at its casino by providing incentives, such as rebates on losses and the use of Crown's private jet. In dismissing the appellant's claims, the primary judge held that the appellant's gambling problem was not a kind of special disadvantage that rendered him susceptible to exploitation. Further, Crown had not sought to exploit, nor was there any scheme to exploit, any disadvantage from which the appellant might suffer.

On appeal, the Court of Appeal held that the appellant had failed to demonstrate that the primary judge's conclusion, that he was not in a position of special disadvantage, was erroneous, or that the wagering transactions that he engaged in with Crown were unfair, unjust or unreasonable. The Court of Appeal upheld the primary judge's finding that Crown was entitled to accept the appellant as he presented himself to it: a successful businessman entirely capable of making decisions in his own interests. The appellant appealed by special leave to the High Court.

In the High Court, the appellant did not seek to challenge any findings of fact made by the primary judge. His argument shifted emphasis to a claim that Crown, by allowing him to gamble at its casino, had exploited his inability, by reason of his pathological urge to gamble, to make worthwhile decisions in his own interests while actually engaged in gambling. The High Court dismissed the appeal and concluded that the appellant's attempt to invoke principles of unconscionability failed. The Court did not accept that the appellant's pathological interest in gambling was a special disadvantage which made him susceptible to exploitation by Crown. He was able to make rational decisions in his own interests, including deciding from time to time to refrain from gambling altogether. Crown did not knowingly victimise the appellant by allowing him to gamble at its casino.

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.