



**COURT OF CRIMINAL APPEAL**

**THE HON. MR. JUSTICE  
MICHAEL MALLIA**

Sitting of the 18 th February, 2011

Criminal Appeal Number. 113/2010

**The Police  
(Insp. Raymond Aquilina)  
Vs  
Svetlana Georgievna Podgorska**

The Court,

Having seen the charge brought against the defendant Svetlana Georgievna Podgorska before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having on these islands in her own personal capacity and in the capacity as the Director, Shareholder, Legal Representative and Company Secretary of the company Viva Vegas Ltd and the lesser and/or administrator of Level 1-2 Park Towers Mall, Gorg Borg Olivier Street, St. Julians, or part thereof, on the 27<sup>th</sup> day of May of the year 2009, and previous months, in St. Julians and/or in these Islands :

1. Operated, promoted or sold or in any way aided or abetted the operation, promotion or sale of a game in contravention of article 5;
2. on the same place, date, time and circumstances, placed on the market, manufactured, maintained or supplied any relevant gaming device, or any part or parts thereof, without having a valid licence issued by the Authority or unless exempted from such licensing requirement in respect of such relevant gaming device in terms of regulations made under this Act;
3. on the same place, date, time and circumstances, knowingly permitted the use of any place for the purpose of the operation, promotion, sale or playing of any game in contravention of any provision of this Act or of regulations made there-under or in breach of any conditions attached to a licence issued under this Act or in breach of any directive issued by the Authority in terms of this Act or of regulations made there-under or for the purpose of storage of a relevant gaming device imported, manufactured or supplied in contravention of the provisions of article 7 or in breach of the conditions attached to a licence issued in terms of the said article 7 or for the purpose of manufacturing or carrying out maintenance of a relevant gaming device in contravention of the provisions of article 7 or in breach of the conditions attached to a licence in terms of the said article 7.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 25<sup>th</sup> February, 2010, by which, the Court did not hold that the prosecution proved its case according to law and therefore, did not find the defendant guilty as charged and ordered her to be set free.

Having seen the application of appeal filed by appellant Attorney General on the 15<sup>th</sup> March, 2010, wherein requested this Court to revoke the appealed judgement and requested also this Court to find the said Svetlana Georgievna Podgorska guilty of all the charges preferred against her and to mete out in her respect all the punishments and consequences prescribed by law.

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Having seen the records of the case.

Considers :

That Svetlana Georgievna Podgorska is of Russian origin with a British passport.

Having spent fourteen years in the gaming industry in the U.K. and other English speaking countries she has absolutely no difficulty in communicating in the English language.

That having been said, around the beginning of 2009 accused decided to introduce a new facet of the gaming industry to Malta, where no money or prizes with a monetary value were to be given. For this purpose she imported from the U.K. from a company named Black Dog Pleasure, six gaming tables costing approximately £ Stg. 8400 and an imitation roulette wheel of some quality but not to professional casino standards. She also bought playing chips with no security features and normal playing cards. These were placed in a showroom or office on the ground floor of Park Tower Buildings in St. Julians for eventual operation of a fun casino.

A flyer or advertisement was placed on the door to these premises (page 62) advertising the range of events that would be performed by the company Viva Vegas set up by accused who was also its director.

One of the paragraphs states specifically “there is no gaming/gambling involved, because your guests play with “fun money” (paper money), so there is absolutely no risk of loosing any real money, just play for fun!”.

The bottom line on this advertisement states “Viva Vegas operates strictly on an entertainment only basis and will not permit or endorse gaming/gambling for real money or monies worth and/or prizes”.

Before embarking on this venture accused sought the advise of the Gaming Authority in Malta and personally

had various meetings with Dr. Joe Borg who represents the Authority.

Dr. Borg admits to these meetings saying that the last one was held in February 2009 and they discussed three proposals. The first was the possibility to run without a licence, the second was for an exemption, if this was necessary, and third new type of licence for what was described as fun games.

Accused had made it clear from the outset that no money was to be involved. Prizes would consist with just a certificate confirming attendance and winning at the tables.

From then on there seems to be a controversy as to what was actually stated. According to accused and her partner Brian Grixti, Dr. Borg told them quite clearly that for that operation they did not need a licence whilst Dr. Borg states that he never committed himself to telling her that she did not need a licence, but only told her to seek legal advice.

Dr. Borg also stated that he did not inspect the devices but only saw them on pictures and they looked very similar to what you see in a casino, size and all.

On the strength of the advice claimed to have been given to her by Dr. Borg accused also changed the name of the company from Fun Casino as originally intended to Viva Vegas and then went about setting up a legitimate business. She applied to the VAT department, trade licence and employment licence. At every department she was told what she was needed to produce but was never asked for anything in writing.

On the 21<sup>st</sup> of May the devices ordered from the U.K. arrived in Malta and these were placed in the office set up in Park Towers in St. Julians together with the promotional flyer fixed on the outside of the main door. This office was more like a showroom with glass windows around so people could see what was going on in the inside.

On the 25<sup>th</sup> of May 2009 a resident in Park Towers called Inspector Joseph Falzon from the Gaming Authority telling him that he was concerned about gaming premises in the block. Falzon went on site and found a full size roulette table, black jack table and another card table that seemed like a punto bianco. He also noticed a promotional flyer attached to the glass door promoting the services and observed the last paragraph where it was specifically stated that no money or prizes with a monetary value were to be given.

On the 27<sup>th</sup> of May Mr. Falzon accompanied the Police with a warrant to search the flat. The same tables were still there. No gaming was taking place. He described the room as small for the tables concerned with very restricted space. The tables looked more for display than for actual gaming. He did not technically assess the equipment. It was easy removable, seized and taken to the Police General Headquarters.

In the meantime accused was arrested and brought before Inspector Ray Aquilina who was investigating the case.

On the same day the 27<sup>th</sup> of May 2009 accused released a statement saying that she had a casino experience in the U.K. and in Malta, had requested meetings with Dr. Borg and Ms. Edwina who told her in no uncertain terms that as the law then stood she did not need a permit to operate her establishment. However, on making further enquiries with the Attorney General Inspector Aquilina was advised that charges should be issued and Podgorska arraigned in Court, in connection with breeches of the Lotteries and other Games Act Chapter 438 of the Laws of Malta.

Under cross examination Inspector Aquilina stated that the premises was closed and not opened to the public and he did not have any information that gaming had in fact started. He stated however that the tables were similar to the ones found in a casino and he was not aware that

gaming paraphernalia could be found in toy shops, however after the investigation he became aware that some shops do sell gaming paraphernalia. He was aware that accused had made her proposals in writing to the Gaming Authority and was advised to remove the word casino from her proposal, which she did.

Accused cooperated with the investigation, however she was not able to produce a written permit from the Authority to go ahead with her project.

On being asked why her arraignment took so long after the investigation was concluded, the Inspector said that for proceedings to be instituted they had to have the consent of the Attorney General and that took some time in coming.

Other witnesses in this case were Supt. Paul Vassallo, who had accompanied Inspector Aquilina on site and confirmed seeing the promotional flyer on the front door saying that the services did not include prize monies. He had talked to accused who told him that she was told from the Gaming Authority that she did not need a licence.

Bernard Zahra from the Lotteries, Gaming Authority heading the investigation department of the Authority also went on site and saw the showroom at ground floor level. The doors were closed and could see gaming tables with roulette and other gaming paraphernalia. After some searches with the MFSA he traced the owner of the company operating the premises to the accused and made a report to Executive Police (page 68). Mr. Zahra confirmed the notice affixed on the door and stated that there was no evidence that business had already started. It results that accused was licensed to act as Pit Boss at Portomaso and the Oracle Casino specifically to premises mentioned. This licence has nothing to do with the proposed activity to be run by the accused.

Joseph Zammit, a clerk at the Trade Licensing Unit stated that accused has a licence for organising events and parties (page 80). Category B refers to personal activities

in relation to organising events and parties. This licence was not premises based client to produce his own premises.

Accused stated that the items confiscated were cards, chips, tables and a smaller version of a roulette wheel. The items are for sale across Malta including at one time at LIDL on December 2009. There was nothing special about the items. They are not the same as found in casinos that are made to professional standards. Casino chips are made specifically for each casino with security features. These chips represent money. The chips found in her possession were exactly the same as those found in toy shops. They have no security features. No value attached to them.

The same with cards. These are made specifically for each casino and destroyed every day. The cards she bought were normal cards from toy shops.

A professional roulette wheel at the casino weighs approximately 80 kilos and balanced to perfection. The one she had was light and could be lifted with a pair of hands. It is made of a fine plastic. She stated that her project was new to Malta, no money was to be involved and neither were prizes to be given, just certificates declaring a winner.

Professional casinos operate of an entire different plane where real money is involved.

She intended to make a profit out of these venture by organising events on the premises provided by the clients who got a thrill from operating the tables. She stated that before starting the venture she went to the Authority and talked to Dr. Borg who told her that no such activity had been set up in Malta before. He asked her to set out her proposals in writing which she did. She also was present for various meetings and they went into great detail over the law and found that her project did not fall under any provision. They also discussed the U.K. Act which

specifically states that “ no proceeds to be appropriated for private gain.”

When a client engages her services he does so for the events and not to play at the games.

After these meetings Dr. Borg specifically told her that she did not need a licence but suggested that she change the name of the company from Fun Casino to Viva Vegas, which she did.

She then set up a company named Viva Vegas and went about the various departments to set up a legitimate business. She was however prevented to do so by her arrest and eventual arraignment in Court.

The Attorney General submitted that the Magistrate’s decision was based on alleged misconceptions between accused and Dr. Borg, but accused knows the English language well and there could never have been a difficulty in communicating.

Accused should have sought legal advice and not relied on her own interpretation of the law.

Regarding the second charge this relates to gaming devices in contravention of section 7 of Chapter 438 of the Laws of Malta. This specifically says that “no person shall place on the market gaming devices or any part or parts thereof unless in possession of a valid licence”.

Accused did not have a valid licence and is therefore in contravention of this rule.

The promotional advert claims that the equipment is of high quality and professional croupiers would be available for people using the devices, which means that the devices needed a licence and it is irrelevant whether they are used or not.

The third charge also relates to article 7(1) of Chapter 438, which prohibits the storage of any devices in



contravention of the said article. If found guilty of the first charge then she has to be found guilty also of the third.

On the other hand the defence argued that even though there may not have been linguistic problems, the First Court went further and acquitted accused because it came to the conclusion that she acted in good faith and had no criminal intent, which is a basic element for guilt and invited this Court to give a proper interpretation of the definitions given by the same law to gaming devices and games.

Considers :

This Court agrees with the defence that for a proper appraisal of this case the Court has to make reference to the interpretations given at the initial stages of the Law as regards to games, gaming devices and the meaning of game of chance and skill.

The basic facts of this case are that the accused imported items which are similar to the ones used in professional casinos but are not manufactured to the same standard or requirements. There are no security features on the chips or the playing cards as is normally found in professional casinos. What is more important is that it was specifically stated that no money or money prizes or prizes with a monetary value were to be given as a result of operating the devices.

Now article 2(1) of the Lotteries and Other Games Act Chapter 438 states ***“a game means and includes except for the purposes and the definitions of amusement machine and amusement game in this sub-article a game of chance and a game of chance and skill .....*”**

A game of chance is described as ***“a game for money and, or prizes with a monetary value the results of which are totally accidental”***.

A game of chance and skill ***“means a game for money and/or prizes with a monetary value, the results of which are not totally accidental but depend to a certain extent on the skill of the participant.”***

So whenever this article mentions the word game of chance and game of chance and skill that has to be interpreted in the context of the definitions above stated i.e. games for money and/or prizes with a monetary value.

This means also that when article 7(1) of the abovementioned Act speaks of devices, these devices have to produce the effect of the definitions mentioned previously in article 2(1).

It is obvious that the purpose of this Act is to limit, control and regulate the use of gaming devices for the purposes of gambling, which involves a very real risk of losing money.

It is not the objects themselves that are prohibited but only in so far as they are used for the purposes of illegal gambling or other games of chance involving money or monetary gifts. Otherwise all imitations bought at toy shops would be prohibited as they too can be used for gambling.

In this case the accused's venture does not fall under any of these definitions, as she very ably pointed out, gaming paraphernalia may be bought over the counter at toy shops. Although these are of a very limited value they may still be used for gaming or gaming purposes, even though they are not to professional standards and yet the law does not prohibit the purchase and use of these imitations so long they are not used for gambling in the meaning set out by law.

This Court therefore is of the opinion that the venture proposed by the accused does not fall under any of the limitations or requirements set out by Chapter 438 of the Laws of Malta.

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This besides the fact that like the First Court this Court is convinced that accused did not have a criminal intent when she proposed this venture, that so far, has remained at the proposal stage and not put into any form of commercial activity.

This Court has repeatedly affirmed the principal that it will not disturb a judgement by the Court of Magistrates or for that matter the Criminal Court if it comes to the conclusion that that Court could reasonably and legally arrive to the conclusion that it did.

This Court carried out an in-depth appraisal of the judgement and evidence given in the First Court and comes to the conclusion that it could have reasonable and legally arrive at the conclusion that it did.

For this reason and others above mentioned this Court therefore dismisses the appeal filed by the Attorney General and confirms the decision given by the First Court, does not find accused guilty as charged and orders her immediate release.

It also orders the return of all the confiscated items to the accused.

**< Final Judgement >**

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