

In the Supreme Court of Judicature of Jamaica
In Common Law
Suit No. C. L. 1032/1979

Between Eric Levien Plaintiff
A n d Ideal Betting Co. Ltd. Defendant

W. B. Frankson and B; E. Frankson for plaintiff
A. C. Mundell for defendant.

Heard: 21st July, 1980

Delivered on: 15th December, 1980

Morgan J:

The decision was taken by me to put this judgment in writing as the result of this case may well be of interest to the trade.

This action has been brought by Eric Levien, the plaintiff, to recover from Ideal Betting Co. Ltd., the defendant, the sum of \$10,000.00 which the plaintiff claims is the proceeds of wagers taken by him on horse races on the 28th day of October, 1978.

The agreed facts are that at this horse race, the plaintiff placed what is known as an "accumulator bet" with the defendant a firm of bookmakers. An accumulator bet is one in which the wagerer selects a horse from each race, to win or to place. If the horse wins on the first race the sum which constitutes the dividend to be paid to him from that race is, instead, placed on the second horse he has selected on the bet and if this horse wins the accumulated dividend is placed on the third horse selected and continues in succession in conformity with his accumulator bet. The plaintiff's forecast was for six horses in the first, second, sixth, seventh, ninth and tenth races. The horses were Priceless Gen, Kunta Kente, Palm of Gold, Middlesex, Timber King, Black Hawk in that order. He wagered \$1.00 that they would win, and \$1.00 place and another \$1.00 that the horse Middlesex would win in the seventh race. The first three horses won, the first second and sixth races. The horse Middlesex did not participate in the seventh race. The non-participation

of this horse did not affect the bet. In the ninth race the horse won and the accumulated dividend was then \$11,988.55 but on the tenth race, the last on the accumulated bet, the horse failed to win or place.

Now the defendant bookmakers have 64 printed rules and conditions which govern all bets accepted by them. The rules relevant to this case are numbers 11, 12 and 13 which read as follows:

- (11) MAXIMUM WINNINGS. The maximum payable on any voucher and/or any client in respect of one day's racing shall be Ten Thousand Dollars (\$10,000.00);
- (12) In any accumulator bet, the client loses so soon as one of the horses named by him fails to win or place as the case may be;
- (13) Win, Show and/or Place Accumulator bets will be calculated to ten cents provided that any amount less than ten cents will not be taken into account in the calculations. The entire stake and/or accumulation are lost if one or more of the horses named in the accumulator loses or fails to Show or Place as the case may be.

The plaintiff holds that he is entitled to collect the maximum winnings of \$10,000.00. The defendant has, however, failed to pay on demand holding that the accumulator bet, was one contract indivisible and his failure to win on all the races as wagered meant that the wager had not been successfully concluded and the plaintiff was therefore not entitled to any payment. Before me Mr. Mundell for the defendant maintains the same line of argument.

On these facts the only matter arising for determination is a legal one and it is this: Is the plaintiff entitled to be paid under the contract? That is, has the plaintiff having reached a winning of the maximum permitted by the races, continue his risk until all the races on which he wagers have been decided? This can be answered primarily by the determination of the meaning or construction to be placed on Rules 11, 12, 13 as quoted above.

As to rule 11, I accept the interpretation assigned to it by Mr. Frankson i. e. if the horses named on this voucher were each to win and the accumulated bet amounted to over \$10,000.00, then the person making the wager would be paid \$10,000.00 only as the defendant assumes no obligation

for any sum in excess of that amount. As to rule 12 he argues that the operative words are "so soon as" ~~for~~ "so soon as" a horse fails to win the client loses, so by logical extension "so soon as" the ~~wagerer~~ reaches the maximum winnings offered the client is no longer at risk.

Rule 13 he holds must be considered in the same context where the extension of the words "so soon as" in Rule 12 appears, and similarly applied as in his arguments in relation to rule 11. What he says in effect is that the contract is not clear and that there is an implied term. Mr. Mundell for defendant maintains that the contract is clear - the punter is betting that all six horses will win and that having regard to the provisions of Rules 12 and 13 the contract was indivisible and the stipulation in Rule 11 of maximum winnings payable means that whatever is won cannot be more than \$10,000.00, and that in such a case there can be no implied term contrary to this specific term.

I am ~~ad idem~~ with Mr. Frankson as to Rule 11 and its construction. What rule 12 says is also very clear to me and actually explains how payment is made on an accumulator bet. This method of payment I find is aptly set out in the Judgment of White J. in the case of Phillip Palmer vs. Golden Horse Betting Limited, Suit No. C. L.1977/P031 where he said:

" The stakes on this voucher also was to win, the expectation being that before the better could collect, all the horses on each voucher had to win. The bets were described as accumulated bets....."

This Palmer case concerned a different Betting Co. and there was no evidence that their rules were similar to the defendants or even different. The interpretation does not appear to have been argued here but White J. summed it up as "accumulated bet," so notwithstanding the absence of argument, I accept and adopt it as the correct interpretation and construction of what is commonly known as an 'accumulated bet'. "

I can see no particular construction to be placed on the words "so soon as" which appears in Rule 12 to make it dissimilar, for these words could easily have been substituted to read "if", "whenever" "immediately" or any other such word.

More particularly Rule 13 states as if in clarification that the entire accumulation is lost if one or more of the horses named in the accumulator bet loses. This fortifies the clear interpretation above. Additionally the betting voucher completed by the plaintiff also bears in his hand-writing or someone authorised by him, the words "accm. all 6 for \$1.00 win and \$1 place". It is quite clear that by the addition of those words he understood and intended at the time of the contract that all six horses were wagered to win or place.

If the plaintiff's argument is correct a curious result may arise where on an accumulator bet of six horses if the first horse produced a dividend of \$10,000.00 - the maximum winnings and the remaining five horses lost, the plaintiff would still be entitled to payment even though what he contracted was never performed.

The interpretation as is propounded can only be considered if the terms of the contract are not clear. The Court would then pray in aid evidence or proof of a uniform or general custom and/or usage in the trade or the fact that the defendant has on former and/or similar occasions adopted a particular course of action.

I find that the entire contract with which the parties intended to be bound is expressed in writing in Rules 11, 12, 13. No other custom or usage has been proved for the Court to imply other or additional terms in the contract. Express terms are used and those must prevail.

An accumulator bet is not defined in the contract but how the stakes are paid on the bet is clearly spelt out in the rules. The bet undisputedly authorizes the wagerer to take the winnings on one horse to put on the other horse till all are completed and I hold that the calculation as to payment does not arise until all the horses on the bet have won or placed i. e. total performance is required. When one reaches that stage then payment is considered and it does not matter how much you have won what is recoverable now becomes an amount not exceeding the maximum payable under the rules.

Horse racing is gambling legalized and gambling by definition is a game of chance. In any such game a person takes great risks to secure equally great results. The converse of that is that equally disastrous results are likely and it is in that spirit one enters that exercise.

Plaintiff's Counsel argues it is not equitable and calls it an unjust enrichment of defendant which natural justice would not countenance. I venture to borrow an adage and say that mutuality, equity and natural justice are strangers to gambling.

I find that on the contract the plaintiff is not entitled to payment and his claim therefore fails.

There will be judgment for the defendant with costs to be agreed or taxed.