

IN THE SUPREME COURT OF JUDICATURE

IN COMMON LAW

SUIT NO. C.L. W014/91

BETWEEN DELROY WHITE PLAINTIFF
AND CHARLES OFF BETTING CO. LTD. DEFENDANT

Clarke Cousins and Andre' Earle for plaintiff
Jeffrey Mordecai for defendant

June 9 and 11, and July 10, 1992

PANTON, J.

In his statement of claim dated 8th January, 1991, the plaintiff claims that as a customer of the defendant, a licensed bookmaker, he placed with the defendant winning bets on horses that raced in England on June 30, 1990. The defendant accepted the offers to bet by accepting the cash staked by the plaintiff. However, the defendant has, in breach of this contract, failed to pay the declared dividends to the plaintiff.

The defendant, having entered appearance in February 1991, filed a defence dated March 25, 1991, and served it on the plaintiff on March 26, 1991. It was apparently unhappy with the state of this pleading so it filed an amended defence bearing the same date as the original defence and served it on the plaintiff on March 28, 1991. In the amended defence, the defendant denies that the plaintiff was a customer and denies further that the plaintiff staked any sum on bets on the 13th race. The defence further denies that the plaintiff won the bets' and denies that there was any contract or any breach thereof.

The defence contends that the bets were placed in contravention of the rules in that:-

- (1) the bets were in fact offers to bet which were not accepted;
- (2) the offers were made after the running of the race; and
- (3) the locked bag containing the vouchers was locked at a time after the running of the said race.

Further or alternatively, the defence says that the plaintiff obtained the said vouchers by fraud. The particulars of the fraud are:-

- (1) the plaintiff was in collusion with one Rohan Daley and/or others directly or indirectly to illegally obtain the results of the race before placing the bet; and
- (2) there was a code known only to Daley, the plaintiff and other co-conspirators which code was used to secure the results of the race to the benefit of the plaintiff before the race was announced and locally commented on.

Later, when the evidence is looked at, it will be seen that there is no evidence as to the operation of a 'locked bag,' being in use at the defendant's shop on the day in question. It is obvious that at the pleading stage the defendant was in a state of confusion and uncertainty in relation to its own system. It is not surprising therefore that it found it necessary to file a defence and an amended defence bearing the same date.

The plaintiff's case

The plaintiff has been gambling on horses for about fifteen (15) years. On Saturday, June 30, 1990, he went to the defendant's shop at Orange Street, Kingston, to bet on races that were scheduled to take place that day in England. He placed two bets on the 13th race. The bets were written by a clerk employed to the defendant. The clerk advised the Head Office in Mandeville by radio of the bets. The plaintiff remained in the shop and heard the broadcast of the race. The horse 'Corrupt' won the race; 'Peleng' came second. The bets were a quinella and an exacta. Both were winning bets. The plaintiff being an expert turfite realized that he had won a substantial sum and that payment would be by cheque so he waited until Monday to collect his winnings. Alas, no luck! He was advised by employees of the defendant that the police were investigating the bets as fraud was involved. The plaintiff maintains that he was not involved in any fraud. To date he has not received his winnings. The evidence does not disclose that any arrest has been made in relation to the alleged fraud.

The defendant's case

The defendant called two witnesses - Rohan Daley, a race commentator, and Delores Minott, the defendant's sales clerk. Daley, who was employed to Track

Price Plus as race commentator, provided the commentary on the 13th and 14th races that day. These commentaries went to the shops of Track Price Plus and other bookmakers including the defendant. Daley said that he collaborated with two persons, a Mr. Fitzie and one Glen who he said owned a horse at Caymanas Park the well-known local race track. These men had approached him with a "tantalizing offer". He delayed the commentary, then used a code to communicate the placings to his collaborators who should have placed bets at illegal betting shops. The code was "known only to (him) and Fitzie and Glen". According to him, his collaborators "got insatiable and went and wagered at legal shops". Daley was dismissed for his efforts. However, he still commentates today. The police became aware of the code; spoke to Daley, but made no arrest.

Delores Minott testified that she was the clerk who wrote the vouchers in dispute. She has been working at the shop for six years. She knows the plaintiff. He purchased bets at the said shop on the 29th and 30th June. On the latter day, there were 14 races on the programme. She related the procedure involved in placing a bet: it is written by the clerk, and then reported on a CB radio to the head office of the defendant company in Mandeville.

On the day in question, she said there was a 'timing' system in operation; not a clock bag system mentioned in the pleadings. Although there was a timing system in operation, Miss Minott said that she was not paying attention to the time. She said that the offending vouchers were purchased about a minute before the commentary. She reported the bets by radio. A Mr. Charlton decides whether a bet is to be accepted or not. Her evidence continues: 'The bets on exhibits 1 and 2 were accepted by Charles Off Betting but head office told me that the time had passed for me to report'. She said that this information was communicated to her by radio. In a case such as this, one would have to cancel the voucher. However, she said that the customer was not there. She made no attempt to locate the customer. The plaintiff, she said, was not in the shop when the information came to her.

She further testified that the plaintiff and another man bought vouchers on the 14th race but she never mentioned to them that the bets for the 13th race had not been accepted. She said that when the plaintiff came on the following Monday

to collect his winnings, she told him that irregularity had been discovered and the police were investigating the matter. Up to the time that she gave her evidence she had not been contacted by the police or by Track Price Plus in relation to any fraud or other irregularity.

Findings

I assessed the witnesses as they gave their evidence. I was most impressed by the plaintiff and came to the conclusion that he was speaking the truth and that I could rely on his word. The witness Minott did not inspire confidence as to her reliability. She paused for excessively long periods to answer the simplest of questions asked of her. Such hesitancy gave me cause for concern as to her motive and purpose in giving evidence. In quite a few instances her answers were mere mutterings. I did not conclude that she was particularly interested in divulging the truth.

I find that the bets were written by the witness Minott and that the offers were communicated by her on the CB radio to the head office and there was no adverse communication to her by the head office in relation to these bets. In other words, the defendant did not reject the offers. It received and accepted them. I find that the plaintiff was present in the shop during this reporting of the bets by the witness Minott and that he remained in the shop until the race had been run and the dividends declared. I find that the witness Minott, who acted as agent for the defendant company, did not communicate or attempt to communicate to the plaintiff that his bets were late and so had not been accepted. I find it an irresistible inference that she made no such communication as up to the running of the race she had had no information that the bets had not been accepted. Indeed, had there been such communication by the head office to the witness Minott, the probability is that she would at least have made an effort to communicate with the plaintiff who, I have no doubt, was in the shop up to and after the running of the race. It is quite significant that when the plaintiff went to collect his winnings on the following Monday, he was not told that his bets were late; he was instead told that there was fraud.

The vital ingredients of offer, acceptance and consideration were present in this transaction between the plaintiff and defendant. That being so, and there being no vitiating factor, the defendant is bound by the consequences of the

transaction. In this case I find no vitiating factor as there is no fraud directly or indirectly involving the plaintiff. Rohan Daley's evidence as to fraudulent conduct on his (Daley's) part, even if it is true, has not implicated or tainted the plaintiff in any way whatsoever. Indeed, by calling Daley as a witness, the defendant has conclusively proven that the plaintiff was not involved in any fraud. If the defendant were serious about the allegation of fraud it would no doubt have proceeded against Daley himself by perhaps joining him as a third party from whom an indemnity would be sought.

If the defendant operates a system that was not properly conceived or designed, and is not properly executed, it cannot accept offers to bet and then try to avoid the consequences of the acceptance by pointing to some defect or loophole in its system. The defendant cannot blow hot and cold. It cannot legally penalize innocent contractors for faults in its system of operation. That is what it is seeking to do in relation to the plaintiff whose vouchers have not been cancelled, and whose money has not been refunded.

Judgment is accordingly entered for the plaintiff for \$19,340.00 plus interest at 6% from June 30, 1990, to July 10, 1992. Costs to the plaintiff to be agreed or taxed.