

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CIVIL APPEAL NO. 147/01**

**BEFORE:     THE HON. MR. JUSTICE FORTE, P  
                 THE HON. MR. JUSTICE HARRISON, J.A.  
                 THE HON. MR. JUSTICE WALKER, J.A.**

**BETWEEN                     CARLTON BROOKS                     APPELLANT  
  
A N D                     THE JAMAICA RACING COMMISSION                     RESPONDENT**

**Raphael Codlin and Miss Brandie Anderson instructed by Raphael Codlin  
and Company for the Appellant**

**John Vassell Q.C. and Miss Sheena Stubbs instructed by Dunn Cox for the  
Respondent**

**March 10, 11, 2003 and   April 2, 2004**

**FORTE, P:**

I have read in draft the judgments of Harrison, J.A. and Walker, J.A. and agree with the reasons and conclusions therein. However, I add the following words of my own. The attempt by counsel for the appellant to describe the amount ordered to be paid by the Commission as a "penalty" was misconceived. The amount ordered to be paid was the sum of money which the commission found to be owing to the trainer, after an enquiry which it is empowered to undertake. (See Rule 15 (vi) of the Racing Rules). The complaint as to the order requiring the outstanding debt to be paid to the Commission for transmission to the trainer is also

without merit. Failure to obey the order of the Commission would no doubt in due course, result in the name of the owner being placed on the "Forfeit List" which would deny the horse the opportunity of competing in races. (See Rule 161A (vii) of the Racing Rules).

As a result of the findings of Harrison, J.A. and Walker, J.A. with which I entirely agree it is unnecessary to decide the question whether the Racing Commission is a Public Authority and whether an order of certiorari can issue against it.

**HARRISON, J.A:**

I have read the reasons of Walker, J.A. and I agree. However, these are my comments.

The substance of the complaint of Mr Codlin, counsel for the appellant is one of the jurisdiction of the Jamaica Racing Commission ("the Commission") to hear the dispute between the owner and the trainer of the racehorse in respect of training fees of \$430,000.00 owed by the owner, the appellant.

The Commission through its delegate, the Operations Steward, having received a complaint from Mr Barber that training fees were owed to him, held an enquiry and found that the sum of \$204,320.00 was owed by the appellant to Mr Barker, the trainer. The Commission ordered the appellant to pay.

Section 22 of the Jamaica Racing Commission Act confers on the Commission, itself established by section 3, the power to make rules "... relating to horse racing at race courses". More specifically, section 22(2) provides that the Racing Rules may contain matters relating to programmes for meetings, entries to the races, entrance fees, prize money, and:

"... (e) all such other matters whether similar to the foregoing or not, relating to horses that are bred for training and grooming as the Commission may from time to time require."

The Racing Rules, 1977, revised in 1998, were consequently made.

Rule 19 confers on the Commission general powers to adjudicate in disputes. It reads:

"The Commission may consider and determine any complaint by any person against another in relation to any matter connected with horse racing including disputes between promoters, owners, trainers, jockeys, jockey's agents, grooms and other persons or may decline to entertain considerations of any such complaint or dispute."

If the sum claimed is found to be due and owing, Rule 19 empowers the Commission to order payment and:

"failure to make such payment shall be regarded as a default for all the purposes of these Rules."

Rule 161A provides for the entering into Training Agreements between owners and trainers, "... the settlement of an account for training fees,"

the procedure for complaint to the Commission on non-payment and the consideration and effect of non-payment.

These powers of the Commission to hear such complaints, are contemporaneous, and not in conflict with, nor do they create an ouster of the jurisdiction of the Supreme Court or the Resident Magistrates' Court. Although the non-payment of racing fees concerns racing, it remains a private dispute between the owner and the trainer. The parties retain the option and the right to pursue their disputes in those Courts if they choose to, taking into account the monetary limit in the lower court.

The facilitating powers of the Commission under Rule 161A are distinctly different from its investigative powers under section 25 of the Act, in which latter case it is conferred with the power to impose penalties. Rule 161A gives no power of enforcement to the Commission, it merely permits an "exposure" of the debt-owing owner by the placing of his name on the forfeit list, to the embarrassment of such owner.

The Commission undoubtedly had the jurisdiction to function as it did.

Cooke, J was correct to refuse to issue the order for certiorari.

**WALKER, J.A:**

On March 11, 2003 we dismissed this appeal with costs to the respondent to be agreed or taxed. We promised then to put the reasons for our decision in writing at a later date and now do so.

The appellant, a Canadian resident, was the owner of racehorses which were stabled at Caymanas Park in Jamaica. He employed the services of a trainer, Antonio Barker, to train his horses. On May 17, 2000, Mr. Barker lodged a complaint with the Jamaica Racing Commission ("the Commission") claiming a sum of \$428,370.00 for training fees due and owing to him by the appellant. Pursuant to Rule 19 of the Jamaica Racing Commission Racing Rules, 1977 ("the Rules") that complaint was inquired into by the Commission which determined that the appellant was indebted to Mr. Barker and should pay to Mr. Barker the sum of \$204,320.00. A subsequent appeal against this decision was heard and dismissed by the Commission. Thereafter, the appellant took the matter to the Supreme Court where he sought an Order of Certiorari:

"...to remove into this Honourable Court and quash the Order of the First Instance Tribunal set up by the Jamaica Racing Commission made on or about the 22<sup>nd</sup> day of August in the year 2000 and confirmed by the Commission whereby it was ordered by the said Tribunal that the applicant pay the sum of \$204,320.00."

That application was heard and dismissed by Cooke J on October 29, 2001, hence the present appeal.

On this appeal the pith of the argument of Mr. Codlin for the appellant was that the sum of money claimed by Mr. Barker, if payable, constituted as between the parties a private debt which was justiciable before a Court of Law and not subject to an order for payment within the

jurisdiction of the Commission. Mr. Codlin argued that Rule 19 under the authority of which the Commission acted in hearing Mr. Barker's complaint was ultra vires the Jamaica Racing Commission Act ("the Act"). That was so, counsel's argument went, because in prescribing Rule 19, the Commission exceeded the powers conferred on it by section 22 of the Act. Rule 19 provides as follows:

19. The Commission may consider and determine any complaint by any person against another in relation to any matter connected with horse racing including disputes between promoters, owners, trainers, jockeys, jockey's agents, grooms and other persons or may decline to entertain consideration of any such complaint or dispute. The decision of the Commission in any such complaint or dispute shall be final and where such decision involves an order to make payment of any money the failure to make such payment shall be regarded as a default for all the purposes of these Rules. A person who wants to prefer a complaint under this Rule shall give notice of his complaint in writing to the Commission together with a statement setting out the grounds of his complaint and a deposit of \$500.00 in respect of each complaint. The Commission shall in the exercise of its discretion, be at liberty either to order that the said deposit shall be forfeited or that the said deposit shall be refunded to the person preferring the complaint or that the person against whom the complaint was lodged shall repay the amount of the deposit to the person preferring the complaint."

Then so far as is relevant for present purposes section 22 provides:

"22.-(1) The fixing of the days on which meetings for horse-racing at racecourses may be held shall be subject to the approval of the

Commission; and the rules relating to horse-racing at racecourses (in this Act referred to as "the Racing Rules") and any variations of such rules shall be prescribed by the Commission.

(2) The Racing Rules may contain provisions relating to—

- (a) the programmes for meetings;
- (b) the conditions on which entries to the various races may be accepted;
- (c) the method of receiving entrance fees;
- (d) the paying of prize money; and
- (e) all such other matters, whether similar to the foregoing or not, relating to horses that are bred for racing and matters relating to racing, breeding, training and grooming as the Commission may from time to time require."

Now this rule-making power given to the Commission by section 22 must be viewed and understood in the context of sections 3 and 4 of the Act.

These sections, respectively, provide as follows:

**"3-** (1) There shall be established a body to be called the Jamaica Racing Commission to regulate and control horse-racing and the operation of racehorses in the Island and to carry out such other functions as are assigned to it by or in pursuance of the provisions of this Act or any other enactment.

(2) The Commission shall be a body corporate to which the provisions of section 28 of the Interpretation Act shall apply.

(3) The provisions of the Schedule shall have effect as to the constitution and operation of the Commission and otherwise in relation thereto.

4. Subject to the provisions of this or any other enactment the Commission shall have power to do all such things as are in its opinion necessary for or conducive to the proper discharge of its functions, and in particular, but without prejudice to the generality of the foregoing the Commission shall have power -

- (a) to grant such licences and permits as may be required by virtue of the provisions of this Act;
- (b) to recommend to the Minister the method of utilizing sums under the Betting, Gaming and Lotteries Act for the assistance of breeders of horses and horse-racing generally; and
- (c) to introduce and implement or to assist in or undertake the implementation of any scheme for the development of the horse-racing industry."

Again Rule 161A(v) – (vii) provides:

"161A. (v) Any trainer who has not received settlement of an account for training fees due from an owner for whom he trains or has trained any horse under a Training Agreement within one month of the date of dispatch of the account or within forty eight hours of the removal of the said horse from the said trainer's stable may report the matter to the Commission. Such report shall be in writing, signed by the trainer, giving details of the name and address of the owner, the nature and the amount of the debt and the date upon which the account was rendered. The Trainer shall also pay to the Commission a fee of Five Hundred Dollars (\$500.00) at the time of lodging his report with the Commission.

- (vi) Provided that not more than twenty-four months have elapsed since the



date upon which the account was rendered, or the removal of the said horse from the said trainer's stable, the Commission shall upon receipt of a complaint, notify the owner against whom the report has been made that payment should be made or a written explanation sent to the Commission within fourteen days of the dispatch of the notification.

- (vii) Should the owner fail to make the payment or should the Commission consider that his explanation is not satisfactory the amount due will after twenty-eight days shall have lapsed from the date of the dispatch of the notification, be deemed to be arrears due under these Rules and the name of the owner will be placed on the Forfeit List."

Yet again Rule 15 (vi) provides:

"15. The Commission shall have power at its discretion

- (vi) To inquire into and deal with any matter whatever which in its opinion related to or in any way affects racing whether such matter arises in Jamaica or elsewhere and to pass such decision thereon as it may consider expedient under these Rules."

Treating with the subject of the interpretation and operation of subordinate legislation, such as the legislation with which we are here concerned, the learned author of Halsbury's Laws of England, 4<sup>th</sup> edn. Vol. 44(1), para. 1522 states (at p.945):

**"Interpretation.** The overriding principle in the interpretation of legislation made under powers

conferred by statute is that it should be construed in the light of the enabling Act generally, and, in particular, so as to be consistent with the substantive provisions, at any rate where it is not authorised to repeal or amend them, and otherwise in conformity with the terms of the enabling power."

A footnote to expand this statement reads that "the courts will not be astute to ascribe to the person by whom the legislation was framed an intention to make ultra vires provision." Indeed, in ***Cinnamond and others v British Airports Authority*** [1980] 2 All ER 368 Lord Denning observed (at p.373) that the approach nowadays should be for the courts to endeavour to interpret modern byelaws so as to render them valid rather than invalid, the Latin maxim being ***ut res magis valeat quam pereat*** (it is better for a thing to have effect than to be made void). I, respectfully, agree with, and adopt, those observations of Lord Denning.

In the present case there was a dispute between the appellant, an owner of racehorses, and Mr. Barker, his trainer, as to money allegedly owing by the former to the latter in relation to the training of racehorses. In the result that dispute was inquired into by the Commission and an order made for the payment of a sum of money. The Rules prescribe a mechanism for regulating the race-horse industry, including a mechanism for settling financial disputes between owners and trainers of racehorses. The Commission, having been seised of Mr. Barker's complaint,

implemented that mechanism and after due inquiry ordered payment of a sum of money found due to Mr. Barker.

I think that Rules 15 (vi), 19 and 161A fall squarely within the rule-making power conferred on the Commission by sections 3 and 22 of the Act, and that it was competent for the Commission to have pursued the course of action that it did in dealing with the dispute between the appellant and Mr. Barker.