IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M28/2001

IN THE MATTER OF THE BETTING GAMING AND LOTTERIES ACT AND REGULATIONS THEREUNDER

AND

IN THE MATTER OF THE JAMAICA RACING COMMISION

AND

IN THE MATTER OF AN APPLICATION BY CARLTON BROOKS FOR AN ORDER OF CERTIORARI

BETWEEN	*CARLTON BROOKS*	*PLAINTIFF*
AND	*JAMAICA RACING COMMISSION*	*DEFENDANT*

Raphael Codlin for Applicant.

John Vassell Q.C. and Kent Gammon for Respondent.

COOKE, J.

HEARD: *19TH & 20TH September, 2001 and 29th October, 2001.*

Mr. Carlton Brooks, the applicant herein, owned racehorses. He contracted the services of Mr. Antonio Barker to train his horses. The latter being aggrieved that he had not received his training fees lodged a complaint

pursuant to rule 19 of the Jamaica Racing Commission Racing Rules (the Rules). The burden of the complaint was that the owner owed the trainer Four Hundred and Twenty Eight Thousand Three Hundred ($428,370.00.). A detailed statement accompanied the complaint, which was duly sent to the applicant. At the conclusion of the hearing by the body designated by the Racing Commission (the Commission) it was determined on the 22nd August 2000 that the applicant was indebted to Mr. Baker in the sum of Two Hundred and four thousand three hundred and twenty dollars ($204,320.00). An appeal against the decision was heard on the 14th December, 2000. This was unsuccessful. The Applicant now seeks

> *"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 22nd 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"*

The main thrust of Mr. Codlin's effort on behalf of the applicant was his submission that Rule 19 was ultra vires in that, in prescribing this rule the Jamaican Racing Commission exceeded the powers conferred on it by Section 22 of the Jamaica Racing Commission Act (the Act). I will now set out that section as is relevant.

"22- (1) (not relevant)

(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 fore-going 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."

Section 3(1) of the Act states that:

"3(1)

There shall be established a body to be called the Jamaica Racing Commission to regulate and control the horseracing and the operation of racecourses 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."

Section 22 of the Act merely emphasizes the very extensive mandate given to the Commission. I would assume that Parliament in giving to the Commission the responsibility to "regulate and control horseracing" decided that it had confidence in bestowing such authority on persons, with the requisite expertise and experience to do what was best for all concerned with the horseracing industry. Mr. Codlin would give the words "to regulate and control horseracing and the operation of race courses in the island" (S3 (1)

of the Act) a most restricted interpretation. He would say, it appears, that the role of the Commission would be limited to what takes place during the course of a race meeting. As such a debt arising out of a training agreement would be outside the purview of the Commission. It was a private debt (if at all) between private individuals. Is this correct? The races are a culmination of the preparation of the racehorses and the satisfaction of the requisite antecedent procedures relevant to those particular races. It would seem to me that in the establishment of the commission "to regulate horseracing and the operation of racecourses"; entitles that body to make such rules as in its opinion is necessary, or expedient or to facilitate the operation of the horseracing industry. I must say I would be loath to find any prescribed rule offensive unless it can be demonstrated that such rule is clearly outside of the Commission's competence. These rules, some two hundred and fifty six (256) in number are quite comprehensive and seeks to embrace the myriad aspects of horseracing. Rule 101 A(1) is in these terms:

> "*161 A (1)*
>
> ***Every owner of a horse in training with a licensed trainer must, before the horse is entered or run in any race, enter into a Training Agreement in the form set out in the Third Schedule to these Rules or in such other form as may be approved by the Commission with his trainer and this agreement must be registered with the Commission. Where such horse is owned in partnership this Agreement must be signed by each part-owner of the horse."***

In this case there was a Training Agreement in accordance with this Rule. I note that it is not being said that such a required training agreement is a private matter. Rule 161A (1v) states that the failure to register a Training Agreement constituted a breach by both owner and trainer. Rule 19 (which will be set out subsequently) provides the mechanism whereby there can be a determination of the dispute between the owner and trainer pertaining to alleged outstanding fees. This Rule contrary to the posture of the applicant does not seek to oust the jurisdiction of the civil court in the adjudication of matters concerning a claimed debt. The opening words of that Rule are "The commission may consider and determine ....."

Rule 19 did not preclude Mr. Antonio Barker from pursuing his cause in a civil court. The Rule provided him with an alternative recourse – one which he may well have thought to be simpler – less formal and no doubt less expensive. He would be in a familiar setting and, perhaps, not in the strange surroundings of a courthouse. Rule 19 provides an efficacious means of the timely determination of the dispute. The adjudicators were not strangers to the operation of the horseracing industry - in this case operation stewards. This rule seeks to determine disputes within its own environment. Such an endeavour ought not to be criticized. In my view Rule 19 is

expedient and facilitates the operation of the horseracing industry. It is therefore within the competence of the commission to prescribe this rule. It is indeed true that unlike 30(2)(b) of the Act where penalties imposed by the Commission for a breach in recoverable as a debt in any court, it would appear that the only consequence of failure to pay is that by Rule 161 A (vii) the name of the owner will be placed on the Forfeit List. This "is a record of arrears published under the authority of the commission or a recognized turf Authority.' This rule apparently presupposes that in the payment so determined the owner will behave in an honourable manner. The threat of publication on the Forfeit list, it is assumed would be sufficient to avoid disparaging glances from others involved in the industry.

Mr. Codlin referred the court to sections 25 and 30 of the Act. Section 25 is in there terms as far as is relevant:

> *"25 The "Commission may, where it considers it expedient so to do, hold or cause to be held an investigation –*
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> *(a) to determine whether any licence granted under Part III should be suspended or revoked.*
>
> *b) in respect of the breach of any of the regulations or of any the Racing Rules made under this Act or of any terms or conditions of any licence or provisional licence; or*
>
> *c) as repect any matter related to or connected with its functions so as to determine whether any of such functions should be exercised.*

Section 30 as is follows: -

"30 (1) The Commission shall have power to impose penalties for any breach which has been found to be committed, pursuant to investigations under section 25, so, however, that the penalty in respect of any such breach shall not exceed two hundred and fifty thousand dollars.

(2) Any such penalty –

(a) be paid into the funds of the Commission;

(b) be recoverable by the Commission as a debt in a Resident Magistrate's Court."

Using those two sections as a foundation Mr. Codlin submitted that the only monies payable as a result of any decision by the Commission were in the nature of a penalty and as such had to be paid directly to the Commission. Consequently the Commission was legally precluded from prescribing any rule which purported to give its jurisdiction to determine issues between private parties. In any event the Commission had no jurisdiction to deal with a situation where a claim exceeded $250,000. Further in contrast to Section 30 rule 19 does not speak to any mechanism for the enforcement of the paying of the debt.

Section 25 and 30 of this Act deals with investigation of breaches and consequent penalties imposed by the Commission as a result of action initiated by it. By contrast action undertaken under Rule 19 is solely by

individuals. In the latter situation the Commission's role is 'to consider and determine' the issues that have been raised. When the Commission institutes action successfully the result may lead to punitive consequences. Under Rule 19 the determination of the Commission cannot be said to be punitive. It is erroneous to say that because Mr. Barkers original claim exceeded $250,000 (section 30(1) the Commission had no jurisdiction to hear it. The limit of $250,000 has to do with a penalty. Mr. Barker's claim was quite different, it had to do with a debt. The limit of $250,000 as regards a penalty is quite irrelevant to a claim under Rule 19. I have already dealt with the issue of enforcement.

I now reproduce rule 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, groom 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 this 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."

The amplitude of Section 3 (1) and especially 22 (2) (e) of the Act is self evident. The provisions of Rule 19 sanctions the action taken by the trainer – Mr. Antonio Barker. There may well be occasions when a Rule/Regulation could be found to be impugned in that it is a objectionable as not being in conflict or unharmonious with the enabling Act. See – Attorney General v. Milts United Dairies (1922) 91 LJKB 897, Customs and Excise Commissioners v Cure and Derby Ltd. [1962] 1 QB 340 Rule 19 cannot be challenged. As already stated Rule 19 is unobjectionable.

Before departing from this aspect of my judgment I wish to make two comments. Firstly, when the applicant sought to participate in horseracing by becoming an owner he was well aware or deemed to have been aware of the Rules. He must be taken to have accepted the Racing Rules see **Calvin Carr [1979] 2 AER 440**. Secondly, there is the decision of our **Full Court in Dr. Paul Wright (Administrator for the Estate of George Brown-Warren deceased) v Jamaica Racing Commission & Vincent Edwards (sent Mo. M78/94 – 7th December 1994 unreported).** This case concerned a determination by the Commission in respect of a claim for money for veterinary services. Although the Judgment does not specifically say so it

would seem sufficiently certain that it was a Rule 19 claim. The Full Court was not at all troubled by the legality of this Rule.

The second thrust of the applicant arguments was directed at the decision of the first instance tribunal. This decision is now reproduced.

> *"Decision handed down by the Stewards on Tuesday 22nd August,*
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> *2000 in the case of Trainer Antonio Barker vs. Owner Carlton Brooks held at the Office of the Jamaica Racing Commission, 8 Winchester Road, Kingston 10.*
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> *We accept that payments have been made and sums collected by*
>
> *Trainer Barker, however due to the poor record keeping and the failure of Mr. Brooks to ensure receipts were given to him for the sums paid for the sums paid we will rule as follows. We will use the total of $418,320. We accept receipts showing payments $103,000, that is from Mr. Brooks' side. We accept receipts showing $111,000 that Mr. Barker showed. The balance therefore is $204,320. I accept also that Mr. Barker had said initially that payments were made to him, that which he had received and he had not given the receipt, however, Mr. Barker is correcting himself at this stage; he is unable to give me any assistance further. We therefore have no other choice but for you Mr. Brooks to pay to Mr. Barker, the Commission rather, the $204,320. It must be paid to us in cash and we will pass the sum over to Mr. Barker. Let me go back through it again,* it is *$418,320 that we corrected it to, $103,000 worth of receipts we got from Mr. Brooks and $111,000 worth or receipts from the other side, Mr. Barker's side, the balance remaining is $204,320. You must make this payment. If either of you are dissatisfied with this decision here, you have the right to appeal. Mr. Brooks, you can decide whether or not the two weeks is sufficient and any change must be by agreement by both parties here. That is the best we can do."*

The submission was that the tribunal only took into consideration payments documented by receipts although it accepted the applicants evidence that he had made payments for which he received no receipts. Accordingly, the tribunal failed to evaluate the viva voce evidence which was not supported by receipts. Therefore the decision was unreasonable.

There is no record of the proceedings before the first instance tribunal. An analysis of the recorded decision shows:

(i) The tribunal considered that it was critical that there should be proper record keeping by both parties.

(ii) The tribunal considered that receipts were of significant importance.

(iii) In respect of viva voce evidence unsupported by receipts there was conflicting evidence. It would appear that at some point Mr. Barker conceded that there had been payments by the applicant for which there had been no receipts but the former subsequently resiled from that position.

(iv) The tribunal disregarded the viva voce evidence entirely in respect of both parties. Hence the substantial reduction in respect of the original claim.

At the hearing, the importance of receipts was evident so much so that as the record of the appeal proceedings reveal there was an adjournment of the first instance proceedings to facilitate the applicants production of receipts.

Was the approach of the tribunal incorrect when it decided to ignore evidence unsupported by receipts? This is a domestic tribunal. I would imagine that it is quite conversant with the practices within the racing industry. If this tribunal decided that receipts were essential in its decision making, I cannot say that, that was an unreasonable approach especially as there was complicity viva voce evidence.

For the reasons given the application for certiorari is refused. The Respondent shall have its cost.