

CA. CIVIL - R.M. Court - Central - Central of Jamaica  
const in order - whether will be brought to attention of  
appellant - whether enforced by JAMAICA - whether dismissed

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CIVIL APPEAL NO. 6/91

BEFORE: THE HON. MR. JUSTICE FORTE, J.A.  
THE HON. MR. JUSTICE DOWNER, J.A.  
THE HON. MR. JUSTICE BINGHAM, J.A. (AG.)

BETWEEN PERCIVAL O'MEALLY PLAINTIFF/APPELLANT

A N D CECIL CHARLTON DEFENDANT/RESPONDENT  
T/A Charles off betting

Clark Cousins for Plaintiff/Appellant

B.J. Scott, Q.C. & Norman Harrison for Defendant/Respondent

May 6 and June 24, 1991

BINGHAM J.A. (AG.)

This is an appeal from a judgment of His Honour Mr. N.L.V. Sang, a Resident Magistrate for the parish of Manchester delivered in the Resident Magistrate's Court at Mandeville on 18th September, 1990 in which he found for the defendant on the claim with costs to be agreed or taxed.

At the conclusion of the hearing of the matter we dismissed the appeal, affirmed the judgment of the Resident Magistrate and fixed the costs of the appeal at \$500.00. We promised to put our reasons into writing at a later date and this we now do.

This claim arose out of a betting transaction on 17th November, 1984 in which the plaintiff/appellant placed a Double Event wager with the defendant/respondent at one of his off-track betting shops in Mandeville licensed to operate as such under the Betting Gaming and Lotteries Act. The bet involved the horses, namely First Commercial and Harmonica both of whom were nominated to run in the first and second race at a race meeting at Caymanas Park Race Track on that day. This wager to be determined based upon the results of the dividend as declared on the winning horses in the two races.

A Double Event bet is one in which the winnings are calculated on the winning horse on two races run consecutively. A customer (punter) who places such a bet therefore, has a reasonable expectation of winning a sum of money where such an eventuality takes place.

Rule 31 of the respondent's rule which governs Double Event bets reads:

"Where a Double Event dividend is declared on track on any combination other than the winners of the race involved any Double Event bet made with us on those races will be refunded."

The system which was in operation at the respondent's betting shops was that each punter who placed a bet was given a Voucher. At the foot of the Voucher it was clearly stated that:-

"all bets are sold subject to our rules.

READ THEM CAREFULLY"

It was by virtue of the above condition that the appellant agreed to enter into this contract of wager with the respondent.

When the first and second races were run off at Caymanas Park on 17th November, 1984, the horse First Commercial won, but Harmonica was less fortunate. This horse placed second. As the conditions laid down by the respondent's rules required that both horses must win for a Double Event dividend to be paid, the second horse named in the bet, Harmonica failed to satisfy this condition which meant that the appellant lost his wager. That would seem to have been an end of the matter. The Pari-Mutuel Pool and the Totalisator rules regulating such bets at the Race Track, however allows for a Double Event dividend to be declared and paid on the second horse if no such stakes were placed on the winning horse. Such was the situation which prevailed on the

day in question and a dividend was declared and paid at the race track on the combination of the two horses in respect of which the appellant had placed his bet. It was on examination of the Daily Gleaner on a day subsequent to the race meeting in question that the appellant made this discovery.

The rules which govern such bets at the race track are not incorporated into those conditions regulating bets placed at the respondent's book-making establishment.

The appellant sought to encash the Voucher and was met with an offer by a clerk at the respondent's betting shop, in keeping with Rule 31 to refund the sum wagered. Not content he sought legal advice and launched this claim some four years later for moneys due and owing, being \$6,918.84, a sum representing the dividend on the Double Event bet as declared and paid at the race track and the interest accruing.

This claim having met with no success below, he now comes by way of appeal to this Court.

Learned Counsel for the appellant sought to argue some four grounds which on examination amounts to nothing more than a critical analysis of Rule 31 of the respondent's rules. The gravamen of his submissions were that this rule when compared with those of the other 12 book-making firms as also that relating to Double Event bets placed at the race track showed that the conditions governing the respondent's rules were unusual, onerous and restrictive and as such ought to have been brought to the notice of the appellant before he placed his bet. As this was not done he was entitled to disregard it. He stressed that on a fair interpretation of the rule he ought to be paid his 'winnings' based upon the dividend as declared at the race track. He further contends that of all the book-making firms operating off-track betting shops, the respondent is the only one which has such a rule which varies from that prevailing at the race track.

We were not afforded the opportunity to peruse the rules of the other twelve bookmakers, Rule 29 of one of these firms was, however, brought to our attention. It makes interesting reading:-

"Where a Double Event Dividend is declared at the track on any combination other than the winners of the race involved, any Double event bet made with us, those races will be treated as a win accumulator, if the horse named in the offer do not both win, the client loses the bet, if both wins the client wins."

(emphasis mine)

On a plain reading of the above rules it is clear that far from being onerous and restrictive Rule 31 of the respondent's is more generous as to the manner in which such bets are treated. This is in contrast to how they are dealt with by the other bookmaking firms, where for a punter to win both horses must win whereas Rule 31 as stated contains a provision for a refund of the wager where one of the two winning horses had no money staked on it. This contention therefore that the relevant rule of the other bookmaking firms are in keeping with the system applied at the track is obviously without any basis.

Although the particular rule to which we were referred does not support the proposition of law being advanced by Counsel for the appellant, he further prayed in aid the case of Interfoto Picture Library Ltd. v Stilletto Visual Programme Ltd. (1988) 1 All E.R. 348 at pages 350 and 351. This case, a judgment of the English Court of Appeal was cited as being authority for the proposition that where a term in a contract is unusual, onerous and restrictive, there is an obligation on the part of the party seeking to enforce it, to bring it to the notice of the other contracting party before the contract was concluded.

In view of the conclusion reached in relation to the effect of Rule 31 as construed, the case referred to is of no assistance. In that case it was the oppressive penalty clause set

out in the conditions in the written contract which terms were not brought to the notice of the defendants that the Court construed as onerous and held that the party could not enforce such a condition.

In this case the contract entered into by the appellant was governed by the respondent's rules and on examination of the relevant Rule 31 there was nothing unusual or restrictive about it or to suggest that it was onerous, unreasonable or unfair as to its terms. Moreover there is no evidence that when the appellant placed his bet he had a legitimate expectation that in the event of one of the two horses on which he had wagered losing there would have been a dividend paid. The appellant when he entered into the contract of wager with the respondent's firm agreed to be bound by the conditions in place which governed Double Events bets. In so far as he was put on notice by what appeared on the Voucher he cannot now complain that he was not aware of those conditions at the time he placed his bet.

For these reasons we held that the learned Resident Magistrate was correct in the conclusion to which he came and dismissed the appeal with the consequential orders as set out at the commencement of this judgment.

FORTE, J.A.

I agree.

DOWNER, J.A.

I agree.