

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Licensee:	Sportingbet Australia Pty Ltd
Proceedings:	Pursuant to Sections 85(2) and 85(4) of the <i>Racing and Betting Act</i> – Referral of Dispute to Racing Commission for Determination
Heard Before:	Mr Richard O’Sullivan (Chairman)
Appearances:	Mr Tim North SC instructed by Mr John MacNamara for Sportingbet Australia Pty Ltd Mr Bruce Hall for Mr B Inspector Mark Wood for the Director of Licensing
Witness:	Mr Anthony Waller, Chief Operating Officer Sportingbet
Date of Hearing:	27 August 2013
Date of Decision:	22 April 2014

BACKGROUND

- 1) On 28 February 2013 Sportingbet Australia Pty Ltd (“Sportingbet”) lodged a dispute with the Northern Territory Racing Commission (“the Commission”) for determination of whether bets placed by Mr B with Sportingbet were lawful pursuant to Section 85(2) of the *Racing and Bet Act* (“the Act”).
- 2) Section 85(2) states:
85 Legal proceedings in respect of bets
(2) *Where a dispute relating to lawful betting occurs between a bookmaker and a person, the dispute shall be referred by the bookmaker, and may be referred by the other party to the dispute, to the Commission.*
- 3) The bets or wagers in question were placed by Mr B who had opened an account with Sportingbet in March 2009 and continued wagering from that time until September 2011.
- 4) Sportingbet originally lodged a Statement of Claim against Mr B in the Local Court in Darwin in September 2012 seeking to recover \$42,699.09 allegedly owing to them, plus costs totalling \$564.10. A Notice of Conditional Defence was filed by Mr Bruce Hall, Counsel for Mr B contesting the validity of the bets and the amount owing.

- 5) Mr B's Notice refutes that the Darwin Local Court has jurisdiction to determine the Statement of Claim lodged by Sportingbet. It also disputes that Sportingbet holds a licence under Section 90 of the Act and further disputes that Mr B entered into a contract with Sportingbet for the conduct of a betting account. Also claimed in the Notice of Mr B is that Sportingbet operated as an internet gaming provider under the *Gaming Control (Internet Gaming) Regulations (NT)*.
- 6) It submits that as Mr B was granted credit to undertake wagering or betting activity, Sportingbet has breached Regulation 56 and therefore the recovery of debt incurred through the unlawful provision of credit is unenforceable.
- 7) Furthermore the Notice claims that as Mr B placed his bets in his home state of New South Wales, the proper jurisdiction for determination of the matter is New South Wales and not the Northern Territory.
- 8) The matter was adjourned by the Local Court and subsequently in February 2013 Sportingbet referred the dispute to the Commission for determination of whether the bets or wagers placed were lawful.
- 9) This determination is sought pursuant to Section 85(4) of the Act which states:
 - (4) *The Commission shall hear and determine all disputes referred to it under this section.*
- 10) The request for this determination arose from the conditional defence filed by Mr B wherein it is stated that the bets he placed were not lawful and therefore the debts owing as a result of these bets are not recoverable by Sportingbet.
- 11) The Commission accepted the referral of the dispute and determined to conduct a Hearing into the matter and delegated three Commission Members to consider and determine whether the bets placed were lawful.

THE HEARING

- 12) The Hearing was conducted in Darwin on 27 August 2013. Mr Tim North SC, Counsel for Sportingbet stepped the Hearing through his submissions on the operation of the Act with respect to disputed bets. He outlined that the dispute between Sportingbet and Barnes had been lodged with the Commission pursuant to Section 85(2) of the Act. Civil proceedings for the recovery of monies owed had been pursued by Sportingbet as enabled under Section 85(1) of the Act.
- 13) Mr North refuted the argument forwarded in the Conditional and Final Notice of Defence, namely that:
 - Sportingbet is an Internet Gaming Operator under the *Gaming Control Act* and *Gaming Control (Internet Gaming) Regulations*;
 - The relevant jurisdiction to consider the matter is New South Wales; and that
 - Betting undertaken was not lawful.
- 14) Mr North submitted it was not in dispute that the bets or wagers were historically conducted. He advised that Sportingbet has a Sports Bookmaker Licence issued

by the Commission under Section 90 of the Act which provides for a Sports Bookmaker licensing regime.

- 15) In reference to documents lodged on behalf of Mr B in the Darwin Local Court, Mr North submitted that these documents acknowledge betting and the conduct of an account by Mr B with Sportingbet. He submitted that it is also acknowledged that Mr B placed these bets using the internet and telephone, with the vast majority through use of the internet.
- 16) Mr North submitted that all of these bets were made in the Northern Territory, consistent with its Northern Territory licence and that the internet server and telephone call centre system are based in Darwin.
- 17) Mr North provided some background to the difference between gaming and wagering or betting, describing them as “*motherhood issues*” of difference and that the difference is historic in nature.
- 18) Internet gaming is covered by a Northern Territory Act of Parliament for the conduct of games such as slot type games and internet poker, while wagering generally relates to sporting events conducted on a playing field or ground or a racing event. He outlined to the Hearing that a bet or wager placed with Sportingbet by an account holder is lawful unless declared unlawful by the Commission.
- 19) Mr North referred the Hearing to a document tabled by Sportingbet (Exhibit 1) titled “Applicant’s Written Outline of Argument”. He referred the Commission to paragraph 41 which states:

“The NTRC (Commission) is given, as a matter of policy, a jurisdiction over Sports Bookmakers, and has expertise in that area. It is not a matter upon which one would expect the Gaming Control Act 1993 (NT) or the GC (Gaming Control)* Regulations to intrude. This interpretation is confirmed by the definition of ‘lawful bookmaker’ in Section 3 of the Unlawful Betting Act 1989 (NT).”*

* Inserted by the Commission

Section 3 states:

‘lawful bookmaker’ means a person licensed or registered as a bookmaker under the Racing and Betting Act.”

- 20) In divining the difference between internet gaming and betting or wagering, Mr Hall referred the Hearing to paragraph 6 of the “Applicant’s Written Outline of Argument” which states:

*“The GC (Gaming Control)** Regulations dealing with internet gaming (which are directed to matters such as internet Poker and slot type games played with money stakes) are construed against other Acts of parliament in the jurisdiction, such as the RBA (Racing and Betting Act)**. When read in this context, it is clear that wagering on horse races and sporting events was not within the contemplation of internet gaming regulations.”*

** Inserted by the Commission

- 21) Mr North advised that Mr B had acknowledged his debt to Sportingbet when he made a number of payments, including separate payments of \$5,000 and \$3,000 in September 2011 and February 2012 respectively, to offset his account deficit. Mr B had also communicated with Sportingbet staff and made offers of repayment of the outstanding debt, providing further evidence of his acknowledgement of the integrity of the bets made.
- 22) Mr North referred to sworn statements individually provided by the Chief Operating Officer of Sportingbet, Mr Anthony Waller; Client Account Manager, Mr Stephen Wagner; Business Development Manager, Mr Corey Pearson; and Company Secretary and Head of Client Management, Mr Lawrence Chartres. He submitted that these statements evidenced the application for and the opening of a client account by Mr B, applications for initial credit of \$2,000 and extensions of credit to \$50,000 applied for by Mr B and other communications between Sportingbet and Mr B relating to account activity. These include payments to Mr B when his account was in credit and payments from Mr B to Sportingbet to offset debit balances.
- 23) Mr North referred to the usual pack of information sent to a client on the opening of an account and the claim by Mr B that this information pack was never received and the linking of the claim of non-receipt of this information pack to there being no contract between Mr B and Sportingbet. He submitted that if Mr B did not get something it does not undo the contract which was formed when Mr B accepted the Terms and Conditions of Sportingbet when commencing his account.
- 24) In relation to jurisdiction, Mr North submitted that the Northern Territory was the jurisdiction for determining the matter of Sportingbet's claim for debts owed to it by Mr B. He advised that the licence under which Sportingbet operates is a Northern Territory Sports Bookmaker licence. All account opening procedures, verification of the account holder's identity, the contract of each wager, are all activities Sportingbet is legally able to conduct through its Sports Bookmaker licence.
- 25) Mr North advised the Hearing that if the betting was not lawful, any offences would be created through the *Northern Territory Unlawful Betting Act*. If the wager or bet took place in New South Wales he advised that this wager would be illegal. If the wagers placed by Mr B over the internet were gaming activity then these bets would need to be provided for through the *Gaming Control Act* and the systems and persons engaged by Sportingbet would require approval under the *Gaming Control (Internet Gaming) Regulations*.
- 26) Mr North contented that the actions taken by Mr B in disputing the lawfulness of the bets were in response to he and his family experiencing financial hardship, evidenced when Mr B made an offer to make regular and schedule payments to eliminate his account debt to Sportingbet.
- 27) Mr Bruce Hall made responding submissions on behalf of Mr B. He commenced by querying his client's acceptance of a contract to enable lawful wagering to take place. He referred the Commission to an email of 6 March 2009 from Mr Pearson to Mr B in which he states:

"You are able to bet immediately. You will shortly receive your membership card and a booklet outlining all of Sportingbet's betting options."

- 28) Mr Hall queried how his client was legally able to operate his account without the provision of the handbook (booklet).
- 29) Mr Hall also queried Sportingbet's fulfilment of its Licence Conditions as approved by the Commission and in particular he questioned the requirement placed on Sportingbet under Licence Condition 20 which states:

"In circumstances where the betting client has failed to provide sufficient proof of age or identity within ninety days of placing a bet or funding an account, the Sports Bookmaker shall immediately freeze the account until sufficient proof of age and identity is obtained."

He advised this condition had not been met with respect to the operation of the account by Mr B.

- 30) Mr Hall referred the Commission to both the Notice of Conditional Defence and amended Notice of Defence, contained in the Hearing Brief which outlined that Mr B did not enter into a contract with Sportingbet and did not agree to abide by the "contractual provisions" or Terms and Conditions allegedly published through Sportingbet's website. Furthermore Mr Hall advised that the Notice of Defence also does not accept the existence of or application of a contract by the placement of wagers by Mr B with Sportingbet.
- 31) In summing up Mr North submitted that Mr B opened an account in March 2009. He referred the Commission to the sworn statement of Mr Pearson of 27 February 2013 which outlined telephone conversations with Mr B over the opening of a sports betting account and the provision of a PIN number. Procedures followed enabled Mr B to lawfully place bets, with each forming a contract with Sportingbet, an entity licensed in the Northern Territory, with each a contact in the Northern Territory.
- 32) He submitted that the ninety day rule contained Condition 20 of Sportingbet's licence is a verification process only and did not impact on the lawfulness of bets placed.
- 33) He submitted that Mr B had signed an application to open an account and had agreed to the Terms and Conditions offered by Sportingbet. Mr North queried that if bets were not lawful, whether this would also apply to winning bets as when in credit Mr B had made withdrawals from his account.

CONSIDERATION OF THE ISSUES

- 34) Sportingbet has referred the dispute with former client Mr B to the Commission to determine whether bets placed by Mr B were lawful. Sportingbet maintains that it lawfully opened an account for or with Mr B on 6 March 2009 and provided a credit facility of \$2,000, as agreed to by both parties. On that day Mr B commenced betting with Sportingbet.
- 35) Sportingbet submits that all betting activity with them by Mr B was lawful and was provided for under their Sports Bookmaker Licence granted to them by the Commission in January 2002. That Mr B opened an account with and placed bets with Sportingbet is not in dispute.

- 36) In the sworn statement of Mr Chartres, Company Secretary and Head of Client Management with Sportingbet, Mr Chartres refers to a calculation from Mr B's betting statements that during the period he had an account with Sportingbet "*he made wagers that totalled \$3,665,650*". Mr Chartres' sworn statement relating to wagers placed by Mr B is that internet wagers were made via the internet server maintained by Sportingbet at its premises in Darwin and that the telephone wagers were made by operators employed by Sportingbet, also located in Darwin.
- 37) The argument offered by Mr Hall that Sportingbet offered internet gaming product under the *Gaming Control Act* and the *Gaming Control (Internet Gaming) Regulations* is not accepted as the Commission has clearly granted a Sports Bookmakers Licence to Sportingbet for the conduct of bets or wagers, largely on racing and sporting events.
- 38) It therefore follows that the activities of Sportingbet were under the *Racing and Betting Act* not the *Gaming Control Act* and related Regulations as maintained by Counsel for Mr B.
- 39) The Commission also accepts that the domain for placement of the wagers is the Northern Territory and that these wagers were struck under Northern Territory law. As the Licence is provided in the Northern Territory and the bets placed are struck in the Northern Territory, it follows that the relevant jurisdiction for consideration of the dispute and related debt recovery action is the Northern Territory.
- 40) The Commission notes that in opening an account a client agrees to abide by the Rules provided by the relevant Bookmaker with whom the client is opening an account. These Rules are generally prominently positioned on the websites operated by Northern Territory licensed Sports Bookmakers. Sportingbet has a comprehensive set of Rules, which are accessed through a prominently displayed hyperlink, and which includes Rule 18 which states:

The Rules

"18. All wagers are placed and received in the Northern Territory in the Commonwealth of Australia.

These rules shall be governed by and construed in accordance with the Laws of the Northern Territory and each Client irrevocably submits to the exclusive jurisdiction of the Northern Territory Courts in respect of any Dispute or matter arising from these Rules."

This Rule gives added weight to the legitimacy of the argument that Mr B's bets were placed in the Northern Territory.

- 41) It also follows that the betting undertaken by Mr B was lawful. It is apparent to the Commission that Mr B has only sought relief through the action taken when his betting account was in serious deficit.
- 42) The Hearing Brief, inclusive of the sworn statements of Sportingbet Executives, provides details of Mr B's betting activities with Sportingbet. This information shows that when Mr B's account was in credit Mr B withdrew three sums of \$8,000, \$6,000 and \$9,600 in August 2011. The claims relating to unlawful betting and absence of a contract for both the opening of the account and for each bet

placed thereafter, were only made after Mr B's account got into serious levels of deficit. Indeed the initial actions of Mr B when contacted by Sportingbet over this deficit, was to make payments to lessen the deficit and provide advice to Sportingbet that he would make regular payments into the future against this deficit.

- 43) Therefore the Commission is of the view that the claims by Mr B were raised in response to Sportingbet lodging a Statement of Claim against Mr B in the Local Court in Darwin in September 2012 where they sought to recover \$42,699.09, the deficit amount against the account of Mr B, plus costs.
- 44) While noting the history of Mr B's betting activity and betting and account management activity, the issue before the Commission is one purely of whether the bets placed were lawful.
- 45) The facts presented to the Commission on which the Commission must rely on are:
- Sportingbet is lawfully licensed in the Northern Territory as a Sports Bookmaker pursuant to Section 90 of the Act and has held that Licence since January 2002.
 - The licence granted to Sportingbet authorises it to lawfully conduct wagering on racing and sports events.
 - Under its licence Sportingbet is authorised to accept wagers of the type made through an account opened by Mr B.
 - The account opening procedures for this account meet the requirements of the Licence Terms and Conditions approved by the Commission and of the Licensee (Sportingbet) Rules governing the opening of an account. The apparent failure to properly verify the identity of Mr B in a manner and timeframe and take action consistent with Licence Condition 20 is not a relevant issue in this regard.
- 46) The Commission is not persuaded by submissions on behalf of Mr B that his betting activities ought to have been governed by the *Gaming Control Act* and related Regulations. The Commission clearly under the Act has the role of determining whether the bets placed by Mr B with Sportingbet were lawful. The failure alleged by Mr B to receive a handbook apparently sent in March 2009 does not invalidate the contract entered into through opening an account and contract, formed by placing individual wagers.
- 47) The Commission therefore finds, following consideration of all the material presented at Hearing, that the bets placed by Mr B with Sportingbet were lawful pursuant to Section 85(1A):

“For the purposes of this section, a bet is not lawful if it is declared by the Commission, after an investigation in accordance with this section, to be not lawful.”

DECISION

48) Having established that Sportingbet was granted a Sports Bookmaker Licence by the Commission in January 2002, which provides for the operation of Sports Bookmaker activities through use of the internet and telephone, and that the betting activities engaged in by Mr B with Sportingbet were within the parameters of the Licence provided, the Commission therefore determines that bets placed were lawful pursuant to Section 85(1A) of the Act.

A handwritten signature in black ink, appearing to read 'Richard O'Sullivan', with a long horizontal flourish extending to the right.

Richard O'Sullivan
CHAIRMAN

22 April 2014