

Privy Council Appeal No. 27 of 1983

The Royal Hong Kong Jockey Club

Petitioner

v.

Peter James Miers

Respondent

FROM

THE COURT OF APPEAL OF HONG KONG

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL UPON A PETITION BY THE
RESPONDENTS FOR DISMISSAL OF APPEAL,
DELIVERED THE 18TH JULY 1983

Present at the Hearing:

LORD SCARMAN

LORD BRANDON OF OAKBROOK

LORD BRIGHTMAN

[Delivered by Lord Scarman]

Their Lordships' Board is required to consider a petition by the respondents to the appeal that leave to appeal granted in the case by the Court of Appeal of Hong Kong be rescinded and the appeal dismissed. If the petitioners succeed, the appellant cross-prays for special leave to appeal.

The Court of Appeal (by a majority) ruled that appeal lay as of right. The majority held that the appeal involved some claim or question to some civil right amounting to or of the value of \$200,000 or upwards.

No question arises as to the proper construction of the Order in Council which regulates appeals to Her Majesty in Council from the Supreme Court of Hong Kong. The Order was made on 10th August 1909 by His Majesty King Edward VII and is in substantially the same terms as others which have been made in respect of British dominions, colonies and other dependencies overseas. Some have survived as part of the law of those countries which after achieving independence have elected to retain the Privy Council jurisdiction.

Under the Order appeal lies as of right where the matter in dispute is of the value of a stated sum (the figure is now \$200,000) "or where the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of \$200,000 or upwards": Rule 2(a). In all other cases, appeal lies at the discretion of the Court, which must be satisfied that the question involved is one which, "by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council for decision": Rule 2(b). The two questions which call for consideration in dealing with the respondents petition are:-

- (1) the nature of the civil right involved in the appeal; and
- (2) its value.

The appellant was born in Australia. He is a professional jockey. He has lived for the last 10 or 11 years in Hong Kong, where he has earned a substantial income (well in excess of \$200,000 a year) riding at race meetings held under the sanction of the respondents, who effectually control horse-racing in Hong Kong. A professional rider needs their licence to ride at race meetings. Licences are granted annually. The appellant was granted his first licence in 1971 and obtained annual renewals until 1982. The racing season in Hong Kong is from September to April. In May 1982 he sought renewal of his licence for the coming season but was refused by the respondents' Licensing Committee. He was offered, and accepted, the opportunity of a hearing before the Stewards but his appeal was dismissed on 23rd August 1982. The loss of his licence was a severe financial blow: and it may also mean that the appellant, being now an expatriate deprived of the opportunity of earning his living as a jockey in Hong Kong, may lose his residence permit.

The appellant immediately challenged the decision of the respondents by the issue in the High Court of an originating summons whereby he sought a declaration that the respondents' decision was null and void and an inquiry into damages. He advanced five grounds for the court so holding, only two of which need now be considered:- that he was denied a fair hearing and that there was no, or no sufficient, evidence upon which the Stewards could properly conclude that his licence should not be renewed. In a judgment remarkable for its thorough examination of the facts and the law applicable to the case, Mayo J. expressed himself as "not convinced" that it was not open to the Stewards to reach on the available evidence their decision to refuse the appellant the licence which he was seeking, and as satisfied that they had "not in any manner contravened the rules of natural justice".

The appellant appealed to the Court of Appeal. In dismissing the appeal the Court identified the issue as being whether the Stewards complied with the requirements of natural justice, agreed with the judge that they had accorded the appellant a fair hearing, and accepted that the Court, even if so disposed, could not substitute their decision for that of the Stewards (the Court's task being not appeal but judicial review).

The appellant then sought leave to appeal to the Privy Council. The Court of Appeal was not disposed to exercise its discretion in his favour under Rule 2(b) of the Order in Council: but the majority held that appeal lay as of right under Rule 2(a). It was conceded that in losing his licence the appellant had lost the opportunity of earning an annual income in excess of \$200,000 but neither the majority nor the minority opinion identified the civil right involved in the appeal as a right to the grant of a licence. They were agreed in the view that the right involved was a right to a fair hearing. The difference between the two opinions was as to its value.

In a judgment delivered by Cons J., the majority expressed the view that without usurping the function of decision which belonged to the Stewards a declaration could be framed, if the appeal was successful, which would indicate that in the opinion of the Court the Stewards ought to grant the appellant a licence and that "it would be unthinkable that the Stewards would not in that case comply": the right to a fair hearing was, therefore, worth at least \$200,000 to the appellant. Fuad J., dissenting, analysed the proceedings and found that no "contractual nexus between the appellant and the Stewards" was disclosed or pleaded sufficient to raise a case that in refusing him a licence they were in breach of contract. Unless this issue, i.e. breach of contract in refusing a licence, could be shown to be involved directly or indirectly in the proceedings, the right to a fair hearing could not be said to have a value measured by reference to the value of a licence: for a fair hearing would not necessarily be followed by the grant of a licence.

Their Lordships now turn to consider the first question - the nature of the civil right involved in the appeal. Their Lordships agree with all the members of the Court of Appeal that the appeal does not involve any claim or question to or respecting the right to a licence. The respondents are not a statutory authority: their power to grant or refuse a licence is not statutory but contractual in character. The power arises under the Rules of Racing which the respondents publish as governing "all meetings held under the sanction of the Royal Hong Kong Jockey Club". In the general introduction to the Rules it is provided that:-

"Any person who takes part in any matter coming within these Rules thereby agrees to be bound by them."

The appellant had notice of the Rules. Rule 1(ii) provides, so far as material, that:-

"The Stewards of the Jockey Club have power at their absolute discretion:-

(ii) To grant or to refuse to grant, after enquiry and to renew or to refuse to renew without giving any reason licences to Jockeys and Trainers and permits to Trainers and Amateur Riders. Every application for renewal of any licence or permit shall be treated and regarded in all respects and for all purposes as if it were the first application by the applicant for such a licence or permit."

Rule 61 provides that a jockey needs an annual licence and that a licence remains in force only for the current racing season.

In the face of these provisions it is not possible to hold that the Rules confer upon a jockey the right to a licence. Mr. Henry Q.C. for the appellant seeks to overcome this difficulty by relying on the offer of a hearing before the Stewards, which the respondents made after their Licensing Committee had refused him a licence and which the appellant accepted. This offer and acceptance is alleged to constitute a special contract under which they agreed to renew his licence in 1982/83 if he could satisfy the Stewards that no reasonable ground existed for refusing to renew it. No hint of such a special contract appears in the pleadings: nowhere is there formulated the specific term, express or implied, which is now said to have been binding on the respondents and their Stewards. The point has featured as a submission made in argument but not as an issue involved in the appeal. Their Lordships agree with Fuad J.'s analysis of the proceedings which are the subject of this appeal: the appeal involves neither directly nor indirectly any question of a contract other than what is to be found in the Rules of Racing. And their meaning is clear: in the absence of bad faith, which is specifically not alleged, the appellant can establish no right to the grant or renewal of a licence.

The civil right which is involved in the appeal is the right to a hearing and a determination by the Stewards which comply with natural justice. Their Lordships, therefore, turn to consider the second question which arises on the petition - the value to the appellant of this right.

Their Lordships have had their attention drawn to a considerable body of authority on the question of value. They find it, however, unnecessary to review the many

interesting cases on the value of a right to a fair hearing where a licence has been denied because they have reached the conclusion that the proposition that the value of the licence lost is the measure of the value of the right to a fair hearing cannot be said to be raised in these proceedings. The difficulty in the way of the appellant is the same as that which has defeated his submission that the appeal involves the right to a licence. The proceedings as constituted do not involve directly or indirectly the right to a licence. If that right is to be the measure of value, a contractual variation of the Rules of Racing must be pleaded to overcome the otherwise plain meaning of the Rules. But, as Fuad J. has said, no such contract has been formulated in the proceedings.

The appellant has, however, put before the Board an alternative argument. If he cannot rely on his lost earnings, he relies on the cost and expense of his unsuccessful hearing before the Stewards. These costs, he submits have been thrown away on an abortive hearing. And he has adduced affidavit evidence on his application for leave to appeal indicating that the costs expended on the hearing far exceed \$200,000.

As with the first question considered by their Lordships, the present proceedings, which are for judicial review, do not touch upon certain matters crucial to the proper raising of this claim. It would be necessary for the appellant to formulate and plead "the contractual nexus", or, more precisely, though less succinctly, the terms of the contract express or implied upon which he relies before he could begin to establish a breach of contract entitling him to recover such sums as damages. If such a claim can be shown to exist, it must be pursued by action for damages for breach of contract: it does not arise in these proceedings. Indeed, it cannot arise for consideration in an appeal, the issue in which is confined to whether or not there has been a failure on the part of the Stewards to comply with the rules of natural justice.

For these reasons their Lordships are of the opinion that appeal as of right does not lie in this case. Appeal under Rule 2(a) of the Order in Council is, therefore, incompetent.

The appellant's prayer for special leave to cross-appeal must be rejected. Their Lordships agree with all the members of the Court of Appeal that the appeal raises no question of great general or public importance.

Their Lordships will, therefore, humbly advise Her Majesty that the Order of the Court of Appeal of Hong Kong dated 11th May 1983 granting the appellant leave to appeal ought to be rescinded and the appeal and cross-petition for special leave to appeal dismissed. The appellant must pay the petitioners' costs.

