IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 9847/2015

In the matter between:

DARREN HAROLD WARD Applicant

And

NETBET (PTY) LTD *t/a* SPORTINGBET

SOUTH AFRICA Respondent

JUDGMENT: MONDAY, 20 NOVEMBER 2017

DESAI, J:

1. The respondent is a duly licenced bookmaker. It conducts an internet sports betting business under the name Sportingbet. The applicant bets on a regular basis using Sportingbet's website.

2. 31 October 2014 was a particularly lucky day for the applicant. He correctly chose eight winning horses in eight different races run at two different venues on the same day. His R100 stake was made up of 2 bets, one R50 bet that all eight horses would win their races and the other R50 bet that the eight horses would finish in one or other of the top places.

3. It is common cause that the applicant won fairly. However, the quantum of his winnings is hotly disputed and gives rise to the present litigation.

4. The debate, essentially, evolves around the question whether the applicant is entitled to the amount reflected as a possible payment on the betting slip. The betting slip produced in this instance by Sportingbet reflects a "total possible payment" of R4 841 728.28. Beneath that inscription is the clear indication that limits may be applicable in respect of winnings. Contending that the limit was R1 000 000.00, Sportingbet has in fact paid that amount to the applicant. Based upon the express amount reflected as a possible payment on the betting slip, applicant pursues a claim for the balance in these proceedings. Respondent denies liability for the payment of the said balance.

5. In an *in limine* point the respondent sought to exclude the jurisdiction of this Court to hear the matter. It was contended that Section 78(1) of the Western Cape Gambling and Racing Act, Act 4 of 1996 (the Act) ousted the jurisdiction of the court to determine disputes where the gambling licence holder refused to make payment of alleged winnings to the player (that is, the gambler).

6. If the respondent also relies on its own terms and conditions for the argument that the jurisdiction of the court has been ousted, as it appears it does, the point raised should fail on that ground alone. The clause upon which it relies – clause 8 – simply records that in the event of the respondent not satisfactorily resolving the player's complaint, he or she should refer the matter to the Board for a binding decision. Quite patently there is no agreement to exclude the jurisdiction of the court.

7. Mr DW Gess, who appeared on behalf of the respondent, argued that if a dispute between the parties cannot be resolved to the satisfaction of the player, Section 78(1) of the Act makes it "perernptory" for it to be resolved by the Western Cape Gambling Board (the Board) in terms of the Act and in accordance with the prescribed procedure. Mr Gess submitted further that the "peremptory" wording of Section 78(1), which provides that the dispute "shall be resolved" in accordance with the prescribed procedure, takes precedence over the statement contained in Regulation 30 (of the Regulations published in the Western Cape Provincial Gazette, no. 6495 of Friday, 25 January 2008), which provides that a disputed payment of a gambling debt "may be resolved by the Board".

8. Section 78(1) of the Act reads as follows:

"If a licence holder refuses payment of alleged winnings to a player and the licence holder and the player are unable to resolve the dispute to the satisfaction of the player, the dispute shall be resolved in accordance with the prescribed procedure". (Emphasis added)

9. Regulation 30 reads:

"A disputed claim for payment of a gambling debt may be resolved by the Board in accordance with this chapter." (Emphasis added)

10. Regulation 31 reads:

"(1) Whenever a licence holder refuses to pay alleged winnings to a patron or a patron refuses to pay an alleged debt to a licence holder, for any reason, and the licence holder and the patron are unable to resolve the dispute to the satisfaction of both parties, the licence holder shall inform the patron that he or she will refer the dispute to the Board for resolution, after which the licence holder shall, within forty-eight hours, refer the dispute to the Board.

(2) The provisions of subregulation (1) shall not preclude a patron from lodging a complaint directly with the Board..."

11. As Mr AV Voormolen SC, who appeared on behalf of the applicant, correctly pointed out, the Regulations place an obligation only on the gambling licence holder to refer a dispute to the Board for a resolution. The applicant – the player – was under no such obligation. He could have lodged a complaint with the Board by virtue of Regulation 31(2), but did not have to do so.

12. It is not in dispute that in this instance the respondent did not refer the dispute to the Board for resolution.

13. Moreover Section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent tribunal. It follows that any provision in law which purports to confer exclusive jurisdiction should be narrowly construed as it has the result of ousting the jurisdiction of competent courts (**see**

Minister of Police v Premier, Western Cape 2014(1) SA 1 (CC) at para 20).

14. The point *in limine* must accordingly be dismissed.

15. The applicant opened an account with Sportingbet some time prior to placing his bets on 31 October 2014. He does not dispute that in order to do so he must have checked the box on the website which signified his assent to Sportingbet's Standard Terms and Conditions which, *inter alia*, include the following provision:

"The maximum amount that can be won by one customer in one day's betting, regardless of stake, is R1 000 000.00 or its equivalent in an accepted currency."

16. Central to applicant's case is that the above standard term conflicts with the express amount displayed on the betting slip. It was argued on his behalf that as a matter of interpretation, the express term on the betting slip, namely the total possible payment, must prevail.

17. In the alternative, the applicant relies upon variation, waiver and on the representation purportedly made by Sportingbet on the betting slip. The respondent denies making any representation to the applicant that he would be paid R4 841 728.28 and his opposition in this regard is premised upon the *caveat subscriptor* principle.

18. Mr Voormolen SC argued that there is no basis in law to ignore the express written term of the contract which appears on the betting slip.

That term declares the total payment possible. Insofar as the betting slip conflicts with the standard term upon which the respondent relies, the court should not prefer an interpretation that leads to impractical, unbusinesslike or oppressive consequences (see **Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 SCA at para 26**).

19. It was submitted that the interpretation favoured by the respondent is unbusinesslike in that it involved the payment of a stake which was disproportionate to the maximum amount of the winnings. The applicant stated in his affidavit that there would be no benefit to him or any other person taking a bet, to wager R100 if he could achieve the same result, that is winning R1 000 000.00 by wagering a much smaller sum.

20. The respondent did not demonstrate under what circumstances a payout of R4 841 728.28 would be possible and on its version it seems that such a payout was not possible at all. Mr Voormolen SC pointed out that this was not a businesslike interpretation of the express indication on the betting slip.

21. Counsel for the applicant also dismissed the suggestion that the possible payout on the betting slip was the product of a mathematical calculation performed by a computer as an unsound basis for interpreting the contract. Arguing that the interpretation process is objective, and not subjective (see **Endumeni *supra* para 18**), it was contended that Sportinbet's subjective knowledge about the workings

of the computer could not be ascribed to the punter. That is indeed so. However, the punter, in this instance the applicant, should have known that a payment in the amount stated on the betting slip was not possible. It was subject to the limit as suggested on the slip itself.

22. In order to properly understand whether or not the applicant was bound by the term that all winnings are limited per punter to the amount of R1 000 000.00 one has to look at the Standard Terms and Conditions of the respondent, the manner in which the applicant acceded to it, the procedure adopted by a punter when placing each separate bet and, of course, the specific references to limits on winnings during the course of that procedure. If the court accepts that the term relating to a limit binds the punter, then the application stands to be dismissed.

23. It is patently apparent that the applicant must have been reasonably familiar with the respondent's website. He opened his account with the respondent in or about March 2014. Since that date until 31 October 2014 the applicant placed at least 530 bets with the respondent. On each occasion his attention would have been drawn to the terms of the respondent with regard to limits, especially the condition which limited the maximum amount that can be won by any one customer in one day's betting.

24. When opening the account, the applicant was required to sign his assent to the terms and conditions of the respondent by placing a tick in a box indicating that he agreed to those terms and conditions. They

were at all material times available to be inspected on the website of the respondent simply by clicking on an icon.

25. When signing the document by placing an electronic tick in the box, the applicant placed himself in the same position as a person who had physically signed the document. He is bound by the maxim *caveat subscriptor*, whether or not he actually took the trouble to read the terms or not (see **Christie...The Law of Contract in South Africa, 5th edition, 206 p174 – 179**).

26. The applicant does not dispute that he must have indicated that he accepted the respondent's terms and conditions by placing a tick in the box at the time that he opened his account with the respondent. Nor does he dispute that the Standard Terms and Conditions applicable are those relied upon by the respondent. He says he did not read the terms. However, he does not dispute that the words "please note limits may be applicable on your winnings" were displayed on the bottom of the betting slip.

27. In any event, clause 9 of the respondent's terms and conditions is headed "Maximum Payout" and provides in clause 9.1 as set out in paragraph 15 *supra*.

28. It appears that once a bet is placed by the punter, the computer software then applies the odds, automatically calculating the potential payout but directly below the amount stated the warning appears that limits are applicable on winnings. What is probably important is also the

following. That warning is placed directly above the icon "place bet". In other words, the limits indicator is drawn to the attention of the client immediately before each and every bet is placed.

29. Besides the indication on the betting slip of the limit on winnings, once a bet is placed the particulars of the bet are displayed together with the words "limits may be applicable on your winnings".

30. It seems to me that the respondent takes all reasonable steps to ensure that the client assents to the terms and conditions before the account is opened and both prior and subsequent to the placing of any bet the punter is told about the limits on winnings.

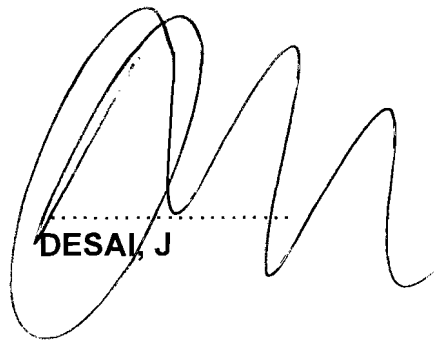
31. Moreover there is no conflict between the Standard Terms and Conditions and the terms of each separate transaction concluded between the respondent and the punter when a bet is placed. There is no express or tacit term that the applicant was entitled without qualification or limitation, to payment of the maximum possible payout reflected on the betting slip.

32. The applicant also sought at some stage to rely on a variation, waiver or alleged representation made by the respondent in the betting slip. I agree with Mr Gess that there was no such representation and the doctrines relied upon by the applicant are not of any assistance to him.

33. I am accordingly of the view that the maximum possible payout for any betting transaction was always subject to and qualified by the

limitations contained in clause 9 of the respondent's Standard Terms and Conditions. The suggestion that applicant was in this instance entitled to the maximum possible payment is artificial and has no regard for the process of placing the bet, the recordal of the betting slip itself and to the limitation clauses contained in respondent's standard terms.

IN THE RESULT APPLICANT'S CLAIMS ARE DISMISSED WITH COSTS.



DESAI, J