



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

CASE NO: 19853/22

In the matter between

RAGING RIVER TRADING (PTY) LTD
OSIRIS TRADING (PTY) LTD

FIRST APPLICANT
SECOND APPLICANT

AND

CLAUDIUS CLAUDE GOUWS

RESPONDENT

Date of Hearing: 05 December 2022

Date of Judgment: 15 December 2022 (to be delivered via email to the respective counsel)

JUDGMENT

THULARE J

[1] This was an urgent opposed application for an order interdicting and restraining the respondent from publishing any defamatory allegations of and concerning the applicants or the representative of the applicants. In the alternative the applicants sought an interim interdict *pende lite* the same terms as the alleged accusations in the interdict and restraint

application, with immediate effect pending the final determination of an action to be instituted by the applicants against the respondent for a final interdict and ancillary relief, which action was to be instituted within 10 days of the order. The interim interdict was to lapse should the applicants not institute the action within 10 days.

[2] The applicants sought the interdict and restrain in respect of the publication of allegations accusing them or any of them of

- (a) causing youth and other persons to become compulsive gamblers and addicts;
- (b) refusing to uphold responsible gambling;
- (c) committing crime and
- (d) participating in corruption and making payment to government officials.

These terms were sought save that nothing therein contained precluded or prevented the respondent from instituting or prosecuting or defending any legal proceedings, on reasonable grounds, or from reporting any well-grounded complaints to any appropriate authorities, including but not limited to the Western Cape Gambling and Racing Board and the South African Police Service.

[3] The court granted urgent relief as regards (c) and (d) above only and made no order as to costs on the day of hearing and indicated that written reasons will be provided later and if so requested. The applicants filed their written request for written reasons.

[4] The first applicant trades as Betway South Africa (Betway), as a licence holder of the Betway brand in South Africa. It offers online betting and gambling products. Bets are placed on its virtual platforms either through the internet or its mobile application. A prospective client applied to open an account using a cellphone number as an account number and provides further information. Once the account is opened, the client is able to make payment from his bank account into the Betway wallet. The money in the wallet is used to place bets. Winnings are credited to the wallet, from where a client can withdraw for payment back into a bank account. Betway offered promotions amongst others in the form of bonuses, free bets and rebates. The second applicant (Osiris) provided ancillary

services to Betway including the provision of staff and support services and other outsourced services.

[5] The respondent had an account with Betway since 15 July 2019 and used his account to place bets. On 13 May 2021 the respondent requested that a cashback or rebate offer received by him be increased. When his request was rejected, he requested closure of the account. There was an option to re-open the account pending a review by the applicants, of an offer made to him. The next day an adjusted offer was made to the respondent, according to the applicants, with the aim of offering him an improved betting experience. The respondent accepted the offer and his account was re-opened. Between 15 May and 2 August 2021 the respondent requested increases in cashback offers made to him. These were increased or declined at the instance of the applicants. It was after the decline of the request of 3 August 2021 that the respondent raised the issue of problem gambling. Betway permanently closed his account for self-exclusion and informed the respondent.

[6] In my reading of the papers, in particular the subsequent conduct of the parties and especially the correspondence exchanged between the parties leading up to this application, it was the response of the applicants to the report of the respondent about his gambling addiction problem that is the real issue between the parties. My understanding of the papers was that the applicants initially thought that it was enough for them to do what they called appropriate protection of the respondent by way of account closure and permanent exclusion. When the respondent complained that that was not enough, they made a settlement agreement with him and offered him an amount in cash payment. When the respondent indicated that he sought treatment for his addiction and that the settlement agreement did not provide for his treatment at the applicants' costs, they shouted "extortion" and ran to court.

[7] I do not understand the applicants' papers to deny that the nature of their business was such that addiction arise. Paragraphs 39 to 41 of their papers read:

[39] I reiterate that Betway's processes were followed to the letter immediately upon the respondent raising the issue of problem gambling. In this regard I point out that it is manifestly not in the interests of Betway either to ignore a request for self-exclusion or to retain patrons who have indicated that they suffer from a gambling problem.

[40] Betway has a dedicated Responsible Gambling ("RG") Team in place specifically for the purpose of ensuring that all such incidents are immediately dealt with when they arise, and that Betway staff are trained to ensure that this happens in practice.

[41] Further to the above, I point out that for the six-month period between 1 February 2021 and 31 July 2021, a total of 1, 001 betting accounts were locked by Betway RG Team in accordance with the above procedure. Of this total, 748 were in respect of patrons who indicated that they wished to self-exclude, and 253 in respect of patrons who had communicated to Betway that they were experiencing problems of gambling addiction."

[8] It is common cause that the respondent conducted betting activities on the two different accounts with Betway in the names of other individuals. Betway claims that this was fraud on the part of the respondent. If I understood the respondent correctly, this was the extreme to which addicts go, in order to satisfy their addiction, as they cannot help themselves. This also explained why he sought the applicants not to leave him damaged and simply walk away, but to help him recover from his addiction. I do not understand the papers to suggest that the applicants dispute that the respondent has a gambling problem and is addicted.

[9] According to the applicants, they arrived at a commercial decision in October 2022 to make an *ex gratia* offer to the respondent in an attempt to put an amicable end to the ongoing aggravation caused by the respondent and to settle his claims, which Betway believed had no merit. The parties agreed on the sum of R150 000-00. The agreement runs 6 pages with 11 numbered clauses. It was signed by the respondent on 31 October 2022. A reading of the agreement indicates that it was in the main informed by the complaint which the respondent had lodged against the applicants at the Office of the

Western Cape Gambling and Racing Board and with the Responsible Minister at the Provincial Government. Clause 1,1,1 of the agreement read as follows:

“1.1.1 If the Customer complies with his obligations to withdraw the aforesaid complaints and timeously provide written confirmation to Lowndes Dlamini Attorneys, then in this event Lowndes Dlamini Attorneys shall, within 5 (five) days of this Settlement Agreement being signed by all parties, pay to the Customer, the total sum of R150 000-00 (One thousand and Fifty Thousand Rand) by way of bank transfer to the Customer’s specified bank account, the details of which are set out hereunder.”

What is conspicuous by absence in this agreement, is a clause or reference to the essence of the respondent’s issue with the applicants, to wit, attention to his rehabilitation as a compulsive gambler. Paragraph 67 of the applicants’ affidavit read:

“Pursuant to the conclusion of the settlement agreement, the respondent withdrew the complaints referred to in the settlement agreement, the first applicant made payment to the applicant’s attorneys of the sum of R150 000-00, which was duly paid by the applicants’ attorneys to the respondent in discharge of the first applicant’s obligations in terms of the settlement agreement.”

[10] I deem it necessary to quote in full the first paragraph of the email that the respondent sent to the applicants’ attorneys on 8 November 2022:

“Good day I trust you are well after careful consideration and a lot of thinking I would request you’re banking details. I am going to transfer the money back to you’re account on a few points that is still on my mind first of all after this whole story betway did not mention responsible gambling they did not offer a self-exclusion from there side with documentation they did not mention nor tried to provide me with any information regarding a program to join or offered to sent me for any concealing or rehabilitation centre for problem gamblers that was caused by them I made my sums and it is not even 30% of what was actually lost I cant accept it and betway thought if they pay the said amount the problem would go away so did I but the emotional effect that ws and still is with me would remain I would like to be excluded all over and would like to be sent to somebody for cancelling and a rehabilitation centre for problem gamblers where I can deal with this issues even tho I received the said amount it’s not the same as I still have trauma and anxiety from this whole ordeal at night I cant sleep I’m watching gambling online and playing games that is free to keep myself busy and not to gamble again I don’t think people realise how this can effect a person’s well being and the actual truma it causes I get nighmares at night I have constant anxiety and its affecting me greatly to a point where I really need to talk to a professional that

handles this type of issues before this whole ordeal I was a normal working business man that cared for his family and was a lovable dad and caring husband now everything is gone and the effects left will not go away, please respond with you're banking details so that I can transfer the amount back to you're account I cant accept it without getting any form of rehabilitation or someone that helps with this to regain my self and life in general."

[11] In its response to the email, the applicants referred the respondent to the terms of the settlement agreement. In respect of the assistance with counselling and rehabilitation, the applicants referred the respondent to the hotline number of the National responsible Gambling Programme at 0800 006 008 or to sms 076 675 0710 and indicated that the applicants were under no obligation to pay for such services. The issue that clearly crystallised between the parties, was that the respondent's position was that the applicants should reconsider what they paid to him, as they needed to handle his treatment and to make the necessary provisions for him to attend all of his appointments in respect of counselling assistance and rehabilitation. This is the true dispute between the parties.

[12] I do not understand the papers to say that the applicants deny that it was out of their provision of an account to the respondent and how they conducted such account that he became compulsive gambler and an addict. What I understand them to deny, is accountability for the costs of his counselling assistance and rehabilitation. When the parties did not agree, in his quest to push for assistance from the applicants, the respondent on 15 November 2022 advised the applicants that he will be approaching the Minister in Cape Town, the Western Cape Gambling Board and the media houses nationally and internationally, and also that he will be making reference to the settlement agreement. In response, the applicants referred him to the settlement agreement.

[13] On 17 November 2022 the respondent wrote to a number of bodies in his quest. To the Western Cape Gambling and racing Board, he requested that they continue with their investigation and evoke the applicants' licence. In the email he indicated sending the Board over 200 other people with the same issue as his. To Cricket South Africa, he lodged a complaint against the sponsorship of Betway and indicated that he had

numerous documents and emails that proved how Betway did business and made South Africa's youth compulsive gamblers and addicts, and also indicated that carte Blanche was doing an investigation. He repeated what was said to Cricket South Africa, in his email to West Ham United Football Team. The respondent also lodged a complaint with the New York Stock Exchange. In the email directed to the applicants' attorneys, the respondent dared the applicants to take their dispute to court, as he did not send emails that he could not prove. In another email he indicated to the applicants' attorneys that he simply wanted the applicants' investors and sponsorships to be aware of how Betway conducted business.

[14] In the email sent to Bloomberg and Al Jazeera, media houses, the introductory part read:

"Good day I have a story regarding a company called betway part of the supergroup company and sponsors of many soccer teams around the world betway uses a vip membership to make youth and people addicted to gambling when you want to self-exclude betway will then promise and give more bonuses for people to keep playing when you're balance is done the vip manager will pay more money into you're betting account to keep you betting in south Africa I have started playing for fun I would receive random money in my account when I queried it they informed me I'm vip member and that I would receive 10% of my money if I pay a X amount into betway every week I told them I wanted to close the account to no avail they kept hooked I had to inform the gambling commission in order for betway to close my account when the gambling commission investigated betway entered into a settlement agreement paying back about 30% of my money provided I withdraw the complaint with the commission ... I have more then 200 emails of different people who it happened to the impact is huge ..."

[15] The next move by the applicants' attorneys was to ask if the respondent was prepared service of all legal proceedings be email, and confirmation that their office was authorized to accept service of all legal proceedings on behalf of the applicants. On 23 November the notice of motion was served on him. The respondent appeared in person. He had not deposed to any affidavits and essentially confirmed what was exchanged between the parties and what his case was. In *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) at para 26 it was said:

“[26] Motion proceedings, unless with interim relief, are all about the resolution of legal issues based on common-cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities.”

In *Da Mata v Otto NO 1972 (3) SA 858 (A)* at 865G-H it was said:

“But the permissibility of motion proceedings as opposed to trial action is not a question of any difference of character between the various kinds of claim which is being enforced, but a question of the proper method of determination in each case of the facts upon which any claim depends. If the dispute of fact is genuine, and is of such a nature that it cannot be satisfactorily determined without the advantages of a trial, which affords the opportunity of estimating the credibility of witnesses, and observing their demeanour, it is undesirable to attempt to settle disputes of fact solely on the probabilities disclosed by the affidavit evidence. In every case the Court must examine the alleged dispute and ascertain whether it is of the aforementioned kind and not fictitious.”

[16] In my view, the dispute of fact on material issues between the applicants and the respondent was not only foreseeable to the applicants. It was known. The applicants failed to heed the basic proposition established in the *Zuma* case and took the risk of having their application being refused on that score. The dispute between the applicants and the respondent is a matter of national importance in my view. Do the applicants conduct business in the manner including that which the respondent explained amongst others to Bloomberg and Al Jazeera? Did the manner in which the applicants conduct business arise the addict in respondent, the youth and other persons? After damaging people through squeezing them to their last cent and having them hooked to dry on gambling, do the applicants dump these people ostensibly to be picked up by South Africa's welfare system or if not lucky by a mortuary van after committing suicide? A court must have answers to these questions in order to determine if there was defamation as claimed by the applicants. I am not satisfied that the proper method of determination of this case, on the facts upon which it depends, was motion proceedings. In my view even interim relief was susceptible to result in an injustice. In my view the facts set out in the papers and the response of the respondent where he was urgently called to court, did not justify such an order.

[17] For these reasons, I did not grant (a) and (b) as set out in para 2 of this judgment, but granted (c) and (d).

DM THULARE
JUDGE OF THE HIGH COURT