

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 41/2007

**BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MR JUSTICE BROOKS JA
THE HON MS JUSTICE LAWRENCE-BESWICK JA (AG)**

**BETWEEN GODFREY THOMPSON APPELLANT
AND HENTLEY MORRISON RESPONDENT**

Ravil Golding instructed by Lyn-Cook, Golding and Co for the appellant

Aon Stewart instructed by Knight, Junor and Samuels for the respondent

18 February and 31 October 2014

MORRISON JA

[1] I have read, in draft, the judgment of Lawrence-Beswick JA (Ag) and agree with her reasoning and conclusion. I have nothing that I can usefully add.

BROOKS JA

[2] I too have read the draft judgment of Lawrence-Beswick JA (Ag). I agree with her reasoning and conclusion and have nothing to add.

LAWRENCE-BESWICK JA (AG)

Background

[3] Mr Godfrey Thompson, the appellant, is the son of an employee of Charles Off Track Betting Parlour, located in Mandeville. He was not employed there but would assist his mother in selling bets. On 13 July 2002, Mr Hentley Morrison, the respondent, telephoned Mr Thompson and asked him to place a particular horse racing bet, known as "Pick 9" for him. He would collect the ticket later in the day. Mr Thompson bought the ticket. Both men knew each other before that date and it was not the first time that they were involved in such a transaction via the telephone.

[4] Thereafter the account of Mr Thompson varies from that of Mr Morrison in important details. Mr Thompson asserts that when Mr Morrison asked him to place the bet, Mr Morrison said that he himself did not have the money to place the bet. According to Mr Thompson he told Mr Morrison that if it were that he was looking for someone to "trust" him the money he could not help.

[5] However, when Mr Morrison persisted and Mr Thompson acknowledged actually having money, Mr Thompson told him that he would purchase the bet and if it were successful both men would share the winnings. Mr Thompson bought the bet with his personal money. The bet won.

[6] Mr Morrison's account is different. He asserts that Mr Thompson knew that he was out of town and their usual agreement was that he would reimburse Mr Thompson for all the bets placed as soon as he came into Mandeville. According to Mr Morrison,

when he arrived at the betting shop and was ready to pay for the bet, at first Mr Thompson said that he had forgotten to write it. Subsequently, according to Mr Morrison, Mr Thompson acknowledged that he had written the ticket and demanded half the winnings. He refused to hand the winning ticket to Mr Morrison and, according to Mr Morrison, he also refused to accept the payment for the ticket.

[7] He acknowledged that Mr Morrison had provided the names of the winning horses but said that he would share the winnings, not because he, Mr Thompson was obliged to do so, but because they were friends. On 15 July 2002, Mr Thompson collected the prize money of \$4,167,916.00.

[8] Mr Morrison's evidence further was that Mr Thompson's mother said that if Mr Morrison were to get any of the winnings at all, the men should split the winnings and Mr Morrison should sign signifying that.

[9] Thereafter, Mr Morrison signed a document in which he agreed to be paid half the winnings. Mr Thompson then paid him a manager's cheque and cash totalling that sum. Still, Mr Thompson did not accept the \$320 which Mr Morrison had presented to him as payment for the ticket.

The claim

[10] On 23 July 2002, Mr Morrison filed suit seeking damages for fraudulent conversion of \$2,000,000.00, alleging that he had entrusted Mr Thompson with the winnings and that with fraudulent intent he had converted them for his own use and benefit or for the use and benefit of a third party.

[11] On 23 February 2007, after a trial, Hibbert J gave judgment in favour of Mr Morrison in the sum of \$2,000,000.00 with interest. Mr Thompson has now appealed the decision of the learned trial judge.

Grounds of appeal

[12] There were two grounds of appeal:

1. The learned trial judge erred in law in finding that the cause of action of the tort of conversion was established.
2. There was no evidence before the learned trial judge to form the cause of action of the tort of conversion.

Submissions by the appellant

[13] The first issue argued by counsel, Mr R Golding, for Mr Thompson was that Mr Morrison had failed to prove the tort of conversion. On behalf of Mr Thompson, he maintained that Mr Morrison had not paid for the bet nor attempted to pay for it before the first race was run and therefore he had no right to the proceeds at all.

[14] The argument was that Mr Morrison had been in no position to place the bet due to his lack of funds and his inability to place the bet from the location where he was, in Cross Keys, at the time. He had never been in possession of the ticket and he had not himself placed the bet that won.

[15] According to counsel, Mr Golding, Mr Morrison had failed to prove that he was ever the rightful owner of the betting ticket because at the time of the sale of the bet

Mr Morrison was not entitled to possession. Consequently, his claim to possession was without foundation and should have failed. Counsel argued that Mr Thompson would not have spent his personal funds to purchase the 'Pick 9' ticket for Mr Morrison unless he was to gain some benefit. The primary concern was therefore the issue of consideration, according to counsel for Mr Thompson, and the respondent had totally failed to provide that.

[16] Mr Golding submitted that it was Mr Thompson who had had possession of the ticket at all material times and at no stage of the trial had there been plausible evidence of conversion. Mr Morrison had not established any right to possession of the ticket. He had not paid for the ticket, was never in possession of it and never executed any acts which would cause him to be considered the owner of the ticket. He would therefore not be the owner of the proceeds of the ticket and Mr Thompson would not have committed the tort of conversion.

[17] As it concerns the document which Mr Morrison eventually signed agreeing to receive half the proceeds of the winnings, counsel, on Mr Thompson's behalf, submitted that the agreement which was reflected in the document was between Mr Thompson's mother and Mr Morrison. Mr Thompson had not signed it and it therefore should not be viewed as allowing Mr Morrison to be in possession of the entire proceeds from the winning ticket nor to be in a position to maintain an action for conversion.

[18] According to counsel for Mr Thompson, because Mr Morrison had reduced the contract into writing, this showed that Mr Morrison had made the offer to split the

proceeds and Mr Thompson accepted the offer. Otherwise, Mr Thompson would have been entitled to the entire proceeds of the bet and could have taken all of it for himself.

[19] Counsel for Mr Thompson argued that consequently the tort of conversion had not been established. If the court found that there was conversion, that would be invalidating an agreement which was written by a consenting adult of his own free will.

[20] Further, such a finding would mean that the property would be vested in Mr Morrison who had no legal right to ownership of it since he, Mr Morrison, had not spent any money to place the bet and the mere knowledge of the winning horses was insufficient to make the winnings a reality.

[21] According to Mr Golding, Mr Morrison himself had admitted to the fact that it was an unfair deal/agreement rather than conversion and counsel urged the court to recognize that the learned trial judge had therefore erred in finding that there was conversion on the part of Mr Thompson. He urged this court to recognize that if the court were to find that there was conversion, it would "leave in 'legal shambles' all agreements so entered by friends where the true ownership is vested in the person who expended the money to ascertain the 'property'". He, Mr Thompson, could have used the money to place the bet for himself but because he was reasonable and honest his actions have resulted in this issue.

Submissions by the respondent

[22] Mr Stewart, on behalf of Mr Morrison, acknowledged that payment is normally made before the issue of a voucher, but submitted that the evidence revealed that

when Mr Thompson accepted Mr Morrison's bet, via the telephone, it must have been contemplated by both parties that payment of the bet would come at a later time. If payment came within a reasonable time, it would be accepted.

[23] Counsel argued that to date Mr Thompson has deprived Mr Morrison of half of the winnings and has failed to demonstrate that the learned trial judge, in determining who was the more credible witness, what the facts were and in applying the law, was in such error that his judgment should be disturbed.

[24] He argued that there was a contract between Mr Thompson and Mr Morrison that Mr Morrison would purchase from Mr Thompson a ticket which contains particular information for a particular price. When Mr Morrison asked Mr Thompson by telephone to place the bet, that was an offer. When Mr Thompson accepted the bet in exchange for the cost of the ticket, that was acceptance and consideration, and in failing to provide the winnings Mr Thompson had breached the contract.

[25] However, counsel for Mr Morrison acknowledged that the breach of contract had not been pleaded by Mr Morrison but he urged the court to consider that submission in any event, in order to determine ownership and the right to possession. Counsel submitted that from the moment that Mr Thompson accepted the instructions from Mr Morrison and wrote the bet, the ownership of the betting ticket was immediately vested in Mr Morrison. There had been no agreement which would have vested ownership in Mr Thompson. He urged this court to accept that Mr Thompson's admission that there

was no such agreement was "an insurmountable blow to his credibility and also cements Mr Morrison's ownership and right to possession of the Pick 9 betting ticket".

[26] He submitted that what was actually contained on the ticket, that is the outcome of the bet, was of no relevance to either Mr Thompson or the betting parlour. It was his argument that if Mr Morrison had refused to pay for the ticket because the bet had lost, he would have breached the contract. Mr Thompson would then have been entitled to sue for the cost of the ticket, and may have been entitled to deduct the cost of the ticket and any other costs which may have been incurred from the winnings, and pay the balance to Mr Morrison.

[27] He opined that in any event Mr Thompson would have expected Mr Morrison to pay the cost of the betting ticket because the betting ticket itself had not been intended by either party to be used as security of its costs, nor was that customary. Mr Morrison's argument further was that he had attempted to pay for the ticket on the day in question and that it was not his fault that Mr Thompson had refused to accept his payment. Mr Thompson should in the circumstances be stopped from denying that Mr Morrison owned the ticket and had a right to possess it.

[28] It was Mr Morrison's further argument that Mr Thompson had admitted that there was no agreement made over the phone between himself and Mr Morrison to the effect that Mr Thompson would use his money to buy the bet and share in the winnings. However, Mr Thompson had split half the winnings with Mr Morrison and that showed that he recognized Mr Morrison's right to some of the winnings.

[29] Counsel for Mr Morrison argued that there was sufficient evidence before the learned trial judge to prove that both Mr Thompson and Mr Morrison intended that Mr Morrison owned the betting ticket and would have had to pay the cost of the betting ticket regardless of whether or not the bet had won. Counsel submitted that therefore, in failing to return the total winnings to Mr Morrison, Mr Thompson had converted his property and the trial judge had correctly come to that decision.

Judgment

[30] Regrettably, this court was not provided with the reasons for the judgment of the learned trial judge. This court must therefore draw inferences from his decision without having the benefit of a statement as to the facts which he found proved or the law which he applied.

Analysis

[31] The grounds of appeal overlap and I propose to consider both grounds together. The main issue is whether or not the evidence before the learned trial judge supports a finding that the cause of action of the tort of conversion was established.

[32] At the foundation of the issues in this case is the determination as to where the ownership of the winnings lies. In this matter the parties agreed on many of the facts. The parties seem to accept that the person who is entitled to possess the ticket/voucher is entitled to the winnings.

[33] Mr Morrison's account, which it must be presumed that the learned judge accepted as true, was that he had on more than one occasion placed bets with Mr Thompson via the telephone and would come to the shop and pay before the race was run. This time however, he sought to pay for the ticket whilst one of the nine races was being run, and Mr Thompson refused to accept the payment.

[34] In entering judgment for Mr Morrison, the judge must be taken as having rejected the account of Mr Thompson and to have therefore accepted that of Mr Morrison. Was the learned judge entitled to do so?

[35] The question concerning ownership, posed by Mr Stewart is extremely pertinent. It is this: Would Mr Morrison have been expected to pay the price of the ticket if he had placed the bet and it had lost? The answer to that question must clearly be in the affirmative.

[36] The expectation was that Mr Morrison would pay for the ticket even if it failed to win. Indeed, if the amount were not paid, litigation to recover any outstanding amount would be one option. The converse would also be true. If the bet won he would be expected to pay. That expectation would be based on the contract which would have arisen when Mr Morrison made the offer to purchase and to place the bet and Mr Thompson accepted and placed the bet, consideration being the monies from the sale of the bet as these monies would inure to the benefit of the betting establishment for which he was acting as agent at the time.

[37] It follows therefore that Mr Morrison had the right to possession of the ticket, provided of course, that he paid for it. Mr Morrison's evidence was that Mr Thompson had refused to accept the cash which he tendered for payment of the bet. The judge's decision must mean that he (the judge) found as a fact that Mr Morrison had either paid the amount or had been ready, willing and able to do so but payment had been refused. In either scenario, which the learned judge must have contemplated, Mr Morrison had the right to possess the ticket.

Conversion

[38] The claim was brought for conversion of the proceeds of the bet. For conversion to occur, Mr Morrison would have had to have the immediate right to possess the ticket (Pollock's Law of Torts). In **Caxton Publishing Co. Ltd. v Sutherland Publishing Co Ltd** [1938] 4 All ER 389, 403 Lord Porter referred to Lord Atkin's definition of conversion in **Lancashire and Yorkshire Ry Co v MacNicoll** [1919-19] All ER Rep 57 as:

"dealing with goods in a manner inconsistent with the right of the true owner amounts to conversion, provided that it is also established that there is also an intention on the part of the defendant in so doing to deny the owner's right or to assert a right which is inconsistent with the owner's right."

The learned authors of Pollock's Law of Torts opined that:

"Conversion may be described as the wrong done by 'unauthorized act which deprives another of his property permanently or for an indefinite time'." (Page 269, para 2)

[39] In entering judgment for Mr Morrison, it must mean that the learned trial judge, found firstly that Mr Morrison had the right to possess the ticket, and also that Mr Thompson dealt with the ticket in a manner inconsistent with the right of the true owner. The right of the true owner was to use the ticket to redeem the winnings to which he became entitled when the horses he had selected as winners did in fact win their respective races.

[40] The unchallenged evidence was that Mr Thompson did not provide Mr Morrison with the ticket or the entire winnings. The learned judge was thus entitled to find that Mr Thompson dealt with the ticket in a manner inconsistent with the right of the true owner.

[41] For conversion to be proved however, Mr Morrison would, in addition to the above, have to establish that there was an intention on the part of Mr Thompson in so doing to deny the owner's right or to assert a right which is inconsistent with the owner's right.

[42] Here again it is unchallenged that it was Mr Thompson who went to retrieve the prize money, without the authority of Mr Morrison, and it was he who retained some of the winnings. These facts provided a solid basis for the learned judge properly concluding, as he must have, that Mr Thompson had an intention to deny the owner's right or to assert a right which was inconsistent with the owner's right.

Actions after the races

[43] It is unchallenged that after the dispute arose, it was the mother of Mr Thompson, who was an employee of the betting shop, who caused a document to be prepared which purported to record an agreement for Mr Thompson and Mr Morrison to split the winnings between the two men. Mr Thompson did not sign that document. Rather, it was his mother who signed it, seemingly in a bid to bring resolution to the situation in which her son was. There was no evidence that she was authorized by her son to contract on his behalf, and any contract that there may have been could not, without more, bind Mr Thompson. In any event, Mr Thompson's evidence was that he was not aware of the agreement between his mother and Mr Morrison (page 87 of transcript).

[44] Further, Mr Morrison's evidence was that for his part he signed the document indicating that he would take half of the proceeds because he believed that he would get no proceeds whatsoever unless he signed. If this evidence is true, this would mean that he signed the document under duress and did not in fact agree to it. The document would therefore not be valid.

[45] The presence and/or validity of an agreement to split the winnings or the breach of any such agreement did not form a ground of appeal. It therefore need not be considered by this court, more so since there are no reasons available to explain the judgment of the learned trial judge and no basis to say that he considered issues outside of the parameters set by the pleadings.

[46] Nonetheless, in my view, the intention of Mr Thompson to deny Mr Morrison's right to his winnings became more evident by his actions after he collected the winnings. Whether or not a valid contract existed, it is a fact that Mr Thompson gave Mr Morrison only a portion of the winnings, retaining some for himself and that he unilaterally determined the portions. This, to my mind, provided a basis for the learned judge to accept, as he must have, that Mr Thompson's intention was to deny the owner's right to the ticket and winnings or to assert a right which is inconsistent with the owner's right.

Conclusion

[47] Based on the judgment pronounced, it must be presumed that the learned trial judge accepted Mr Morrison as a credible witness. In entering judgment for the claimant, the judge showed that he accepted that Mr Morrison was the owner of the winning ticket and winnings. Further, he would have found that Mr Thompson had sought to deprive Mr Morrison of all or at least some of his winnings and that he intended to deal with the tickets and winnings in a manner inconsistent with the right of the true owner Mr Morrison, and to deny Mr Morrison's right to the winnings.

[48] There was sufficient evidence to support such findings. The learned judge would have applied the law to the evidence which he accepted as true and the conclusion would be inevitable that Mr Thompson had converted the property of Mr Morrison.

[49] The evidence and the law support the decision of the learned trial judge that judgment be entered for Mr Morrison and there is no reason to interfere with his decision. I would therefore dismiss the appeal with costs to Mr Morrison.

MORRISON, JA

ORDER

Appeal dismissed. Costs to the respondent to be taxed if not agreed.