

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CA 27 of 2016

[2018] SCSC 1095

---

**TERENCE DINGWALL**

Appellant

Versus

**DAVID HILL ENTERPRISE (PTY) LTD**

Respondent

---

Heard: 17<sup>th</sup> August 2018

Counsel: Mr. E. Chetty for the Appellant  
Mr. Guy Ferley for the Respondent

Delivered: 30<sup>th</sup> day of November, 2018

---

**JUDGMENT**

---

**ANDRE J**

[1] This Judgment arises out of an Appeal before the Supreme Court by Terence Dingwall (“Appellant”), of the 21<sup>st</sup> October 2016, against David Hill Enterprise (Pty) Ltd (“Respondent”), wherein the Appellant seeks that the decision of the Learned Senior Magistrate Mariam Ng’hwani, given on the 10<sup>th</sup> October 2016, dismissing the Appellant’s case be set aside and Judgment entered in favour of the Appellant with costs.

[2] The main ground of appeal as per the pleadings is as to whether the Learned Magistrate was incorrect in her finding that there was no contingent contract created

through the bets, and therefore, no breach of contract occurred noting that the main matter was with reference to a dispute about a betting game.

- [3] The Respondent resists the appeal and both Learned Counsels filed written submissions illustrating their grounds of appeal and objections thereto and due cognizance has been taken of the same for the purpose of this Judgment.
- [4] The following are the relevant factual background as per the Records for the purpose of determination of this Appeal.
- [5] On 16<sup>th</sup> September 2012, the Appellant placed bets at the Respondent's business in several international soccer games. The Respondent runs a betting business and the Appellant was a regular customer. He paid an amount of *Seychelles Rupees One Hundred and Fifty (SR 150/-)*. Afterwards, he claimed that he had won the bets, and that the Respondent was due to pay him an amount of *Seychelles Rupees Forty One Thousand Eight Hundred and Eight (SR 41 808/-)*, plus the betting entry *Seychelles Rupees One Hundred and Fifty (SR 150/-)*. The Respondent refused to pay him. This was because two of the games that the Appellant betted on were played on 15<sup>th</sup> September 2012, a day before the Appellant placed the bet. The Appellant said that he was not aware of this when he placed the bets and thus lodged a Complaint in the Magistrate's Court, claiming a breach of contract. In his Complaint, he alleged that a valid gaming contract existed between him and the Respondent. He claimed the amount of *Seychelles Rupees Forty One Thousand Eight Hundred and Eight (SR 41,808/-)*, which he said was due to him along with interest. The Respondent in his defence to the Complaint denied that there was any entitlement to this sum. It claimed that the Appellant had placed the bets after the games had already been played and the results placed after kick-off were null and void. Thus, the bets were contrary to public policy and unlawful.

- [6] At the hearing before the Magistrate's Court, the Appellant led his own evidence and the evidence on behalf of the Respondent was given by its director, one Jeanine Grand-Court.
- [7] The Appellant testified in a gist that on 16<sup>th</sup> September 2012 he had gone to the Respondent's office where he placed his bets. There was a board where he could place his bets for the games that would be played on that day, so he picked his teams in Italian and Spanish leagues. He was then issued with a receipt for the bets he made. He paid a sum of *Seychelles Rupees Forty One Thousand Eight Hundred and Eight (SR 41,808/-)*, plus a *Seychelles Rupees One Hundred and Fifty (SR150/-)* bet and the receipt shows the times of the games, the bet number and also the time of that the receipt was issued. It also showed that the games were between 16:00 to 21:45 on 16<sup>th</sup>September 2012. The receipt was issued to him at 11:03 on the 16<sup>th</sup>. The results of the games were all in his favour. But the Respondent refused to pay.
- [8] He further testified that on the 15<sup>th</sup> October 2012, he instructed his attorney to write to the Respondent asking for payment for the bets won. The Respondent's attorneys responded on 3<sup>rd</sup> March 2013, stating that the Respondent was only prepared to pay an amount of *Seychelles Rupees Nine Hundred (SR 900/-)*, for the bets of that day. The Appellant testified that the Respondent told him that it would not pay because two of the games had already been played when the bets were placed. He testified that he was not aware that the games had already been played and that the Respondent had taken his money for the bets despite the fact that the two games had passed.
- [9] He admitted that since he was a regular at the Respondent he knew that when games had already been played, customers would normally not be able to place bets. So, since his

bet was taken, the Respondent intended for this to be an ordinary bet and because he did not know that the two games had passed he was entitled to the payment.

[10] Under cross examination, it was revealed through Appellant's testimony that he had been a customer of the Respondent since it opened and placed bets every week. And that before 16<sup>th</sup> September 2012, the most he had won there was *Seychelles Rupees One Hundred and Seven (SR 107, 000/-)*. He had been paid this amount. He testified that he saw the 'notice to customers' which contained betting rules at the defendant. The rules stated inter alia, that, **'bets are valid for 90 minutes of games (plus injury times) ...'**. He also stated that the rules were written on his winning tickets on 17<sup>th</sup> September 2012, when he handed in his tickets. He was asked under cross examination whether some of the games that he had placed bets on were played on 15<sup>th</sup> September 2012 and he conceded that the games were played on that day but said that he did not know this at the time since he had no access to the internet. Hence, he did not know this when he placed the bets the following day on the 16<sup>th</sup>. He further conceded that the Respondent offered to pay him *Seychelles Rupees Nine Thousand (SR 900/-)* in respect of the other bets he had won, that had not been played the previous day. When it was put to him that this was all that was legally due to him, he stated that the receipts showed that the games he betted on would only be played on 16<sup>th</sup> September 2012, between 16h00 and 22h00. At the end of the cross-examination, when he was asked how a passionate football enthusiast like him could not have watched the games on the 15<sup>th</sup>, and whether he was aware of the games on the 15<sup>th</sup>, he responded 'yes'.

[11] The Respondent's witness, Jeanine Grand-court testified that she was the Chief Executive Officer (CEO) of the Respondent at the time of the incident. She confirmed

that the Respondent had put up a notice of rules to customers. She also testified about the games schedule for 15<sup>th</sup> and 16<sup>th</sup> September 2012 and confirmed that the Appellant had placed some bets on games that had been played on 15<sup>th</sup> September 2012. She further testified that those bets were void. The live score sheet, which was accepted into evidence as an exhibit, dated 17<sup>th</sup> September 2012 showed scores for games between 14<sup>th</sup> and 17<sup>th</sup> September. She testified that this sheet showed those games that were played on 15<sup>th</sup> September and confirmed that it was in respect of these games that the Defendant refused payment.

[12] The Learned Magistrate delivered Judgment on 10<sup>th</sup> October 2016 and found that the contingent contract that had been established between the parties was void ab initio. The Court made reference to the provisions of Article 1964 of the Civil Code of Seychelles (“the Code”), and reasoned that the bets for the two games were not dependant on an uncertain event because the event namely, the outcome of the matches that had already been played and were certain. Having made this determination, it was ordered that the Defendant repays the initial bet in the amount of *Seychelles Rupees One Hundred and Fifty (S.R. 150/-)* to the Plaintiff.

[13] With the above layout of the background of the case, I now move to consider the legal standard to be applied in this case and its analysis thereto.

[14] As mentioned above, the Learned Magistrate determined that the betting contract was void ab initio because the event upon which the bets were conditioned was certain in that the outcome of the games had already been made certain. In effect, the Court said that this agreement lacked the element of uncertainty. The Appellant’s evidence was that he did not know of the outcome of the two games when he placed the bet. The Respondent attempted to show that he did know. The Magistrate’s Court did not make a

credibility finding on which of these two versions was preferred. Instead, the Court's finding in favour of the Respondent, hinged solely on the element of uncertainty.

[15] It is to be noted that bets and wagers are a class of contingent contracts, which are defined under Article 1964 of the Code as, '*a mutual agreement the effects of which, with regard to the profits and losses, whether for all the parties or one or more of them, depend upon an uncertain event.*'

[16] It follows from a purposeful meaning of Article 1964 of the Code that they this is a narrow concept falling under the broad concept of contingent contracts. Other types of contracts which fall under this class are insurance contracts and life annuities.

[17] Ordinarily, a betting contract is between two (or more) parties. The first party pays a sum of money to the second party, and the second party promises to pay a certain sum of money to the first party on the happening of a particular event in the future. If the uncertain event occurs as the first party had predicted the second party would be liable to pay. If it does not happen, the second party would not be liable. The basic premise of the agreement is the presence of parties who are of sound mind to get profit or loss on the happening of an uncertain event in the future. The happening of this uncertain event is the sole condition of the contract. It is at the core of the establishment and subsistence of the contract. If the event is certain, for any reason, then it cannot satisfy this requirement. This is a factor that is objectively viewed. Thus, the subjective considerations of the contracting parties are irrelevant. An event either is or is not uncertain. This is a question of fact, which can only be determined objectively. Once the uncertain event has become certain, it is no longer a contingent contract.

[18] In the present case, the Appellant's evidence was that he did not know that the games

had already taken place, and the respondent accepted his bet. The Respondent accepted the placement of the bets, and took the Appellant's money. It seems that the Respondent himself did not know that the two games had already been played. In his view, therefore, the event (the outcome of the games) was uncertain where they were concerned.

[19] While this seems a reasonable view to take, it cannot be accepted by this Court. The existence of an uncertain event is central to the definition of contingent contracts. And the uncertain event has to be determined objectively. If the subjective beliefs of the contracting parties are considered to determine this element, the meaning of uncertain future event would get a new meaning namely, one that is not borne out by the Code. An event either is uncertain or it is certain. What the parties believed, bona fide or otherwise, is irrelevant. Once this element is missing, it ceases to be a bet, because the event is no longer uncertain. The Learned Magistrate was thus correct in its Judgment.

[20] In the circumstances, the appellant and Respondent only had a betting agreement for those bets where the matches had not yet been played. In respect of the two others that had been played no contract came into effect, because an essential element for the existence of the contract was missing, namely, the uncertain future event. The Appellant is entitled to the *Seychelles Rupees Nine Hundred (S.R. 900/-)* for the bets he had won for the matches that had not yet been played and a refund in respect of the two matches that had been played.

[21] In conclusion, I thus make the following orders:

- (a) The Appeal is dismissed, only in so far as it relates to the two matches that had already been played on 16<sup>th</sup> September 2012 and the remainder of the Appeal is upheld. Thus, the Respondent shall pay the Appellant an amount of *Seychelles*

*Rupees Nine Hundred* (SR 900) plus a refund for the bets placed on the two matches referred to above.

- (b) Both parties shall bear their own costs given the circumstances of this Appeal.

Signed, dated and delivered at Ile du Port on the 30<sup>th</sup> day of November 2018.

**S. ANDRE**

**Judge of the Supreme Court**