Appeal decision

Date: 27 May 2014

Code of racing: Thoroughbred

Appeal panel: Judge W Carter (chair), Mr B Miller and Mr G Casey.

Appearances: Trainer Garnett Taylor appeared on his own behalf.
Mr N Torpey, stipendiary steward, appeared on behalf of the stewards.

Decision being appealed: $500 fine – AR175(p).

Appeal result: Appeal upheld.

Extract of proceedings – in the matter of the gelding of the thoroughbred Sagamaster.
Trainer: Garnett Taylor

THE CHAIRMAN: The appellant is one of eight persons who together were the lessees of the thoroughbred Sagamaster on and from 1 February 2013. The appellant, who was to train the horse, held a 25 per cent interest in the lease – the other seven lessees held the remaining interests in shares of either 12.5 per cent or 10 per cent.

Sagamaster, an unraced colt, was leased before he was broken in. The owners of the horse have stud interests and the appellant had put together the lease syndicate before the lease was executed.

A dispute between lessees and lessors has arisen because of the fact that the horse was gelded whilst in the possession of the lessees. This had been arranged by the appellant and the lessees had agreed that the colt be gelded. Furthermore, the appellant alleges that the gelding of the horse was done with the consent of the owners, the lessors. A clause in the lease required the consent of the lessors in writing before the horse could be gelded. No consent either in writing or oral was said, by the lessors, to have been given but the appellant alleges that he had discussed the matter with one or other of the lessors and the gelding operation was done to the knowledge of the lessors and with their oral consent. Some time later one of the lessors complained to stewards that the colt had been gelded in breach of the lease and the stewards proceeded to open an inquiry.

The factual dispute in relation to the issue of consent was aired before the stewards' inquiry and they seemingly proceeded to resolve it in favour of the lessors although there is nothing in the stewards' report to indicate which version they accepted or why.

Of much greater importance is the fact that having inquired, the stewards proceeded to charge the appellant with a breach of AR 175(p), which provides:

"The principal racing authority or the stewards may penalise:

(p) . . . any person who fails or refuses to comply with any order, direction or requirement of the stewards or an official."

The stewards convicted the appellant and imposed on him a fine of $500.

The stewards were of the view that because the lease had been registered with the control body as required by AR32, the terms of the lease constituted an order, direction or requirement of an official for the purposes of Rule 175(p), so that since the appellant and the other lessees had allegedly breached the particular covenant in the lease related to the gelding, he was in breach of Rule 175(p). No charge was levelled against the other lessees.

Mr Torpey in his submissions on the half of the stewards referred to the Registrar of Racehorses as the "official" whose "order, direction or requirement" the appellant had failed or refused to comply with.

In our view these submissions have no merit nor in the circumstances of the case can the conviction and the penalty imposed by the stewards on the appellant be allowed to stand.

AR 175(p) does not in any relevant sense apply to an alleged breach of a covenant in a lease between contracting parties. The relevant term of the lease is simply part of an agreement between lessors and lessees which each side freely agreed to enter into and one only of the several other terms of the lease to which the parties agreed. In no sense can that term of the lease or any other covenant be said to be an "order, direction or requirement of a steward or official". The meaning and application of Rule 175(p) is clear and the fact that one party to a contract, freely entered into by lessors and lessees, allegedly breaches a particular covenant of the lease, cannot be equated to a failure or a refusal by a person to comply with an order, direction or requirement of the stewards or an official. If the facts are established, one person or the other of the contracting parties can pursue any remedy which may be available to one or the other in a civil court with the appropriate jurisdiction.

One should refer also to the definition of "official" in the Australian Rules. "Official" means "a member of the Committee of a Club, a person employed by the Principal Racing Authority, or with the approval of the Principal Racing Authority a person employed by a Club, for any matter pursuant to the Rules."

No relevant person, be it the Registrar of Racehorses or otherwise can be identified in this case as having given any order, direction or requirement which the appellant failed or refused to comply with. We simply add for the sake of completeness that the "Registrar of Racehorses" is defined in the Australian Rules as "RISA (Racing Information Services Australia), or any agent appointed by it."

AR 32-34 recognise and permit the lease of any race horse which lease has to be registered before the horse is allowed to start in a race. The control body exercises some level of control over the terms of any lease and may require the inclusion in the lease of a desirable provision and the exclusion of any proposed term considered to be undesirable. But subject to that, the "general form of lease" may be adopted by contracting parties with or without any modification clarification (AR34) before registration. The ultimate terms of the lease depend wholly on their agreement. It cannot be said therefore that any covenant in the lease which the parties agree upon can be said to be an order, direction or requirement of an official merely because the lease is registered. Registration is obviously required for a variety of reasons which are integral to the general administration of racing, including the registration of horses and of the owners/lessees.

The argument of the stewards in this case seems to be based on the notion that because the control body requires, for its own purposes, that a lease be registered and that the terms proposed may be varied by the control body, any covenant in the final product is enforceable by the stewards. Rule 175(p), which is sought to be relied upon, however has no relevance or application to an alleged breach of a registered lease of a racehorse. Nor do the stewards have the jurisdiction to penalise one party to a contract when the other party to the contract alleges the former to be in breach of it.

Accordingly there is no proper basis to support the charging of the appellant with a breach of Rule 175(p), nor for penalising him by a fine for what is alleged to be a mere breach of contract between parties.

We therefore order that the appeal be allowed and the conviction and penalty be quashed.

Further right of appeal information: The appellant and the stewards may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **14 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at www.qcat.qld.gov.au