

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No.: 5839/2008

In the case between:

JOHANNES GIDEON BRIEDENHANN

Plaintiff

and

PEERMONT GLOBAL (EASTERN FREE STATE)
PTY LTD

Defendant

JUDGMENT: VAN DER MERWE, J

HEARD ON: 13 NOVEMBER 2008

DELIVERED ON: 4 DECEMBER 2008

- [1] When the plaintiff left the casino operated by the defendant in Bethlehem at approximately 23h00 on 17 May 2008, he had in his possession a cheque drawn on that day by the defendant in favour of the plaintiff in the amount R289 950,00 ("the cheque"), representing the plaintiff's winnings at the roulette tables. On 19 May 2008 however, the defendant countermanded the cheque, resulting in the plaintiff's present action for provisional sentence based on the cheque.

- [2] The cheque therefore represents a gambling debt between immediate parties. At common law a gambling debt is not enforceable and cannot be recovered through the courts. However, section 16(1)(a) of the National Gambling Act, No 7 of 2004 (“the Gambling Act”) provides that despite any provision of the common law or any other law than the Gambling Act, a debt incurred by a person in the course of a gambling activity that is licensed in terms of the Gambling Act or a provincial law, is enforceable in law. It is not disputed that the defendant operates a licensed casino.
- [3] On the other hand section 16(1)(c) of the Gambling Act provides that a debt incurred by a person in the course of any gambling activity that is unlawful in terms of the Gambling Act or applicable provincial law is not enforceable in law. The common law principle of unenforceability of a gambling debt therefore remains applicable in such a case. A provincial law is defined in the Gambling Act as an Act of a provincial legislature concerning the regulation of casinos, gambling, racing or wagering and includes subordinate legislation made in terms of such Act. The applicable provincial legislation is the Free State Gambling and Racing

Act, No. 6 of 1996 (“the Free State Act”) and the regulations thereunder, namely the Free State Gambling and Racing Regulations, 1998 (“the Regulations”). Roulette is a casino game in terms of the Free State Act and the Regulations. As is to be expected, cheating at a casino game is prohibited by both the Free State Act and the Regulations. Section 85(1) of the Free State Act *inter alia* provides that no person shall allow anyone to conduct, carry on or operate any cheating or shall contravene the rules of any game with the intention of obtaining any pecuniary advantage directly or indirectly, whether for himself or herself or any other person. Section 160 of the Regulations *inter alia* provides that no person may claim, collect or take or attempt to claim, collect or take money or anything of value in or from any gaming activity, with the intent to defraud, without having made a wager contingent thereon or claim, collect or take an amount greater than the amount won. It follows that a debt incurred in the course of a gambling activity that involved cheating is unlawful and therefore unenforceable.

- [4] The defendant’s case is that the plaintiff cheated at the roulette tables with the help of one of the defendant’s

employees, one Mr Charles Seitshiro, in the exercise or furtherance of a conspiracy to do so. It is clear in my view that if this allegation is proved, the debt represented by the cheque would be unenforceable, as was properly conceded by the counsel for the plaintiff. The question for decision therefore is whether the defendant has satisfied the onus to show that in the principal case the probabilities are against the plaintiff, taking also into account that in the principal case the burden of proof on this defence will rest on the defendant.

- [5] It is not necessary in this case to provide more than a cursory exposition of the game of roulette. The game is played with the use of a table layout and a roulette wheel. Both the table layout and the roulette wheel have 37 compartments numbered 0 to 36. The table layout and roulette wheel are operated by a croupier or dealer. For each table there is also an inspector whose main duty is to detect and correct any errors made. Bets are normally placed by placing casino chips on a number or combination of numbers on the table layout. A roulette ball is then spun around the roulette wheel. While the ball is spinning the

dealer at some stage will call “no more bets”, signifying that no further bets will be accepted. When the ball slows down it falls into one of the compartments on the roulette wheel, thus indicating the winning number for the particular game of roulette. A marker (“dolly”) is then placed on the winning number on the table layout whereafter the dealer pays out the winning bets in accordance with the odds coupled to each particular winning bet.

- [6] This case however concerns so-called call bets. Call bets are placed by the player by giving to the dealer sufficient cash or chips and announcing or calling the bet, that is the number or numbers on which the call bet is made and the type of call bet. The bet is accepted when repeated by the dealer who then places the bet against a marker button, as opposed to the player placing the bet directly on the table layout. Adjacent to the roulette wheel is a tray with marker buttons for this purpose. A call bet can of course also not be placed after the dealer has called “no more bets.” For present purposes it is only necessary to refer to the call bets “to the full maximum” and “to the half maximum”. A call bet to the full maximum requires R4 000,00 per number called

and in the case of a call bet to the half maximum, R2 000,00 per number is required. The effect of an accepted call bet to the full maximum is that of R4 000,00 in chips placed in specified combinations on the number called as well as on eight numbers surrounding that number on the table layout. If a call bet to the full maximum was made on the winning number, there will therefore be a payout of R39 200,00. If a call bet is made to the full maximum on two numbers, therefore requiring R8 000.00, the result of only one of the numbers being a winning number will be the amount of R35 200.00, as the R4 000.00 placed on the losing number is lost. The position with a bet to the half maximum is the same subject thereto that only the amount of R2 000,00 is bet per number bet to the half maximum, with resultant lower payout.

- [7] The roulette tables relevant hereto are tables ARO3 and AR04. Legislation requires that the defendant place surveillance equipment in the casino. In the result two closed circuit television cameras were installed in respect each of the said two roulette tables. Each camera has its own dedicated digital video recorder which records

automatically and continuously on a 24 hour basis. The cameras are also linked to audio devices positioned at the said tables. On inspection of the recordings thus made, the defendant detected three incidents which the defendant alleges constitute incidents of cheating in the furtherance of a conspiracy to do so between the plaintiff and Mr Seitshiro. The first incident referred to by the defendant took place on 14 May 2008 at table AR03, commencing at approximately 21h15 with Mr Seitshiro being the inspector at the time. The second incident referred to took place at approximately 13h45 on 17 May 2008 at table AR03 whilst Mr Seitshiro again was the inspector. The third incident that the defendant relies on in this connection took place at about 14h49 on 17 May 2008 at table AR04, whilst Mr Seitshiro was the dealer. During each incident Mr Seitshiro changed bets to the advantage of the plaintiff, according to the defendant.

- [8] For the reasons that follow, I believe that the second incident mentioned, is decisive of the matter. I therefore deem it unnecessary to deal with the aforesaid first and third incidents.

[9] According to the defendant the surveillance recordings show that the second incident took place as follows:

<u>Time</u>	<u>Event</u>
13:44:56	The dealer, Ms Lydia Mkhwanazi, spins the roulette ball. The Plaintiff is standing at AR03 and the inspector, Mr Seitshiro, is standing between AR04 and table BJ04.
13:45:08	The dealer announces final bets.
13:45:10	The Plaintiff proceeds to AR04 (from AR03) and, at the same time, Mr Seitshiro stands closer to AR04, and gives his undivided attention to AR04.
13:45:14	The dealer announces "no more bets thank you" and waves her hands above the table.
13:45:15	The Plaintiff puts down R8 000 in cash next to the dealer and calls "fourteen and twenty three to the full max" '
13:45:16	The roulette ball drops in number 3
13:45:19	The dealer announces "change only, nothing goes" -thus, declaring the bet a no bet and that the cash will only be changed for chips and not accepted for a bet. Whilst doing this, the dealer places the money on the change block (where money or chips are kept for changing).
13:45:21	Mr Seitshiro says "two, seventeen"
13:45:23	The dealer places the dolly and announces "three red". Mr Seitshiro then says "two, seventeen" again twice.
13:45:27	The dealer asks the Plaintiff "two, seventeen to the half?"
13:45:28	The Plaintiff responds "uh".
13:45:29	The dealer asks the Plaintiff again "two and seventeen to the half?"
13:45:32	The Plaintiff replies "fourteen and three" and gestures by spreading three fingers.
13:45:33	The dealer repeats to Mr Seitshiro "fourteen and three"?
13:45:39	Mr Seitshiro tells the dealer something inaudible, and the dealer says "two" in response. The Plaintiff tries to call Mr Seitshiro, saying "sorry" .
13:45:52	Mr Seitshiro says something inaudible to the dealer, throws the 2 x white full max bet markers, and instructs the dealer again "two, seventeen". At this time, the Plaintiff walks to AR03, but watches AR04.
13:45:56	The dealer places the full max bet markers on 2 and 17, as instructed by Mr Seitshiro.
13:46:00	The dealer asks Mr Seitshiro if she can count the cash. He says yes. At the same time, the Plaintiff walks back to ARO4,

13:46:04 Mr Seitshiro has his right hand on the value chip tray. The Plaintiff looks at him, and Mr Seitshiro then turns his hand upside down with his palm facing upward.

13:46:09 Mr Seitshiro stands back and the Plaintiff walks to AR03.

13:46:15 The dealer starts counting the cash.

13:46:16 Mr Seitshiro also proceeds to AR03. Mr Seitshiro and the Plaintiff look at one another.

13:46:31 Mr Seitshiro returns to AR04. The Plaintiff observes the proceedings on AR04 whilst standing at AR03. Mr Seitshiro and the Plaintiff repeatedly look at one another and then at the table.

13:49:07 The dealer finishes counting the cash and places the chips for the winning bet.

13:56:00 The dealer pays out R19 400 (38 x R500 and 4 x R100) - for the winning combinations of number 2 that covered number 3. “

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[10] As a result of the winning combinations attached to a bet to the full maximum on number 2, that also covered number 3, the plaintiff collected a payout of R19 400,00. Had the plaintiff's call bet of 14 and 23 been properly accepted, he would have lost R8 000,00.

[11] The response of the plaintiff to the facts so alleged, was very limited. He said that on the recordings provided and inspected before the replying affidavit was filed, the conversations are unclear, “(gesprekke onduidelik)”. He did not however say that the audio recordings did not contain what the defendant set out. He denied the allegation that at 13:45:52 he kept an eye on table AR04 whilst walking to AR03. He denied that the recordings contained any indication

thereof that the plaintiff and Mr Seitshiro looked at each other as alleged and he denied that any gestures were exchanged between himself and Mr Seitshiro.

[12] It appears to me that the exposition of the incident in question set out above, is the result of painstaking and meticulous inspection and analysis of video and audio recordings for the very purpose of using it in court. Moreover, these recordings were made available to the plaintiff and inspected by him and his advisors before the replying affidavit was made. As mentioned above, it resulted in a nonchalant response from the plaintiff. In my judgment the probabilities on this point are against the plaintiff and the matter must be decided on the basis that the defendant will probably establish at the trial that the incident took place as set out above.

[13] Upon analysis of the incident on this basis it is important to note that Mr Seitshiro stood closer to and gave his undivided attention to the table in question, namely AR04. It is therefore highly improbable that Mr Seitshiro could have been unaware thereof that the plaintiff attempted the call bet after the dealer called “no more bets thank you” and that he could have been

unaware thereof that the dealer consequently declared the plaintiff's bet a no bet. Mr Seitshiro had no reason at all to call any numbers, in fact it is common cause that in these circumstances he should have seconded the dealer's announcement of no bet. Mr Seitshiro called or announced the numbers 2 and 17 in these circumstances approximately 6 seconds after the plaintiff's call of 14 and 23. It is hardly possible that Mr Seitshiro could have been confused about these numbers, as was lamely suggested by the plaintiff. Notably, Mr Seitshiro's announcement was made after the winning number had been ascertained and without any protest or expression of dissatisfaction from the part of the plaintiff. Only after Mr Seitshiro's announcement of a call of 2 and 17, did the plaintiff attempt to have the call changed to 14 and the winning number 3, which indicates that the plaintiff attempted to get more help from Mr Seitshiro. In these circumstances also the plaintiff's assertion that the dealer was inexperienced, in fact counts against the plaintiff on the probabilities.

[14] In the final analysis the question is whether on the probabilities the conduct of Mr Seitshiro and the plaintiff must be ascribed to incompetence on the part of Mr Seitshiro and

inadvertence on the part of the plaintiff, as he alleged, on the one hand, or whether it was deliberate conduct. In this regard counsel for the plaintiff pointed out that upon inspection of the relevant surveillance recordings the defendant detected that many other errors were made at the roulette tables. This is true, but all the other incidents referred to, except the three referred to above, involved errors of calculation in relatively small amounts. None involved the changing of a bet. On behalf of the plaintiff stress was also laid thereon that it is common cause that the plaintiff participated in 229 games of roulette on 17 May 2008 and that close inspection of the surveillance recordings in this regard only revealed the two incidents that the defendant relies on in respect of that date. It is however undisputed that prior to the abovementioned incident the plaintiff had a net loss on each of the two roulette tables totalling approximately R21 000,00. Also on the probabilities both the plaintiff and Mr Seitshiro were aware of the arrangement that upon a player winning more than R10 000,00, the particular player and/or table is placed under scrutiny by the defendant. In the result I believe that the probabilities appearing from the conduct of Mr Seitshiro and the plaintiff are decisive and that the probabilities favour the

conclusion that they acted deliberately.

[15] Deliberate conduct of this kind can hardly be regarded as a co-incidence. The probabilities in my view favour the inference that Mr Seitshiro stepped in in the manner that he did during the aforesaid incident as a result of an arrangement or understanding between himself and the plaintiff to assist the plaintiff contrary to the rules of the game and of the casino, when the opportunity presents itself. That, in my book, is a conspiracy to cheat.

[16] It follows that provisional sentence must be refused.

[17] The following orders are made:

1. Provisional sentence is refused with costs.
2. The provisional sentence summons stands as simple summons, it is deemed that notice of intention to defend was delivered on date of this judgement and the rules of Court in respect of a civil action apply to further process.

C.H.G. VAN DER MERWE, J

On behalf of the plaintiff:

Adv. A. J. R. van Rhyn SC
Instructed by:
Cooper Majiedt
BLOEMFONTEIN

On behalf of the defendant:

Adv. S. W. Burger
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