

Northern Territory Racing Commission

Reason for Decision

Applicant:	Mr F
Respondent:	Luxbet Pty Ltd
Proceedings:	Dispute Relating to Betting – Section 85 of the <i>Racing and Betting Act</i>
Heard Before:	Mr Philip Timney (Presiding Member) Mr Walter Grimshaw Mr David Brooker
Date of hearing	3 February 2011
Appearances:	Mr Malcolm Richardson, Manager Racing Mr Eddie Berry, Racing Inspector

Background

1. This matter is related to a previous complaint lodged by Mr J (the J complaint) against Luxbet Pty Ltd (Luxbet). The J complaint was determined by the Manager Racing, pursuant to a delegation from the Commission. Mr J has requested a review of the decision of the Manager Racing, dismissing the J complaint. The outcome of that review will be dealt with separately and a decision published in due course.
2. Both Mr J and Mr F hold individual accounts with Luxbet. In an email dated 15 June 2010, Mr F sought permission from Mr J to use his account to place wagers whilst Mr J was travelling overseas. In late June 2010, whilst Mr J was overseas, Luxbet became suspicious that someone other than Mr J was placing wagers through his account. Luxbet's investigations, confirmed through subsequent conversations and emails with Mr J, revealed that Mr F was utilising Mr J account to place wagers whilst he was overseas, as was agreed by Mr J after Mr F's email request.
3. Mr J subsequently confirmed that he had given Mr F permission to use his account and had provided the necessary access details to allow this to occur. Mr J stated that he asked Mr F to pay some money to Luxbet on his account and that he sent him an email authorising him to use the account, commencing on Saturday 19 June 2010. Mr J states further that Mr F lost \$12,000.00 using his account on 19 June 2010 and won \$31,850.00 on Wednesday 23 June 2010. Mr F continued to place a significant number of wagers via Mr J account during the remainder of June 2010.
4. On being advised of the extent of Mr F's use of his account, Mr J instructed Luxbet to put a hold on his account until his return to Australia. Mr J has also confirmed that at no stage did he advise Luxbet that Mr F would be using his account.

5. In a letter dated 12 July 2010, Mr Andrew Vouris, General Manager of Luxbet, advised Mr J that Luxbet intended to void the wagers placed through his account by Mr F from 23 June to 29 June 2010 on the basis that to allow the wagers to stand would place Luxbet in breach of its licence conditions. The letter went on to advise:
'I note your current account balance is positive \$156,720. If we were to void all Mr F's transactions, this would result in a negative \$82,850 account balance. As a valued Luxbet customer, we are prepared to only void transactions such that your account is returned to a nil balance'
6. Leaving aside Luxbet's offer to void transactions of Mr F only to a nil balance, the total value of the winnings that Luxbet intended to void was \$239,570.00.
7. The dispute revolves around the interpretation of Luxbet's Betting Rules (LBR) and in particular Rule 1.8.7 which provides:
Where a Client establishes an account with Luxbet, it is only the Client in whose name the Account has been established who is entitled to bet via that Account using their user name and security details. Where the Client wishes to authorise another person ("Additional Authorised Person") to use and bet with their Account, the Client must provide written authority to Luxbet before the Client authorises this and provide Luxbet with specific details of the Additional Authorised Person, including their full name, street address, email address, at least one telephone number and date of birth.
8. It is not in dispute between the parties that Mr J did not advise Luxbet that Mr F would be using his account, nor did he inform Luxbet of the Mr F's particulars, as required by LBR 1.8.7. Nor is it in dispute that Mr F held his own account with Luxbet and that account was operational at all times that he used Mr J account.

Submissions on behalf of the Complainant

9. Mr F provided submissions in respect of his dispute with Luxbet by way of a letter from his solicitor, Mr Hamish Cockburn, dated 30 November 2010. Mr Cockburn confirmed that he was acting only for Mr F and that his complaint was independent of the James complaint.
10. Mr Cockburn states that Mr F's dispute with Luxbet relates to two matters, namely:
 - a. *A claim by Luxbet against Mr F for \$48,266.71 for alleged unpaid debit balance on his own Luxbet account; and*
 - b. *An offsetting claim by Mr F for a total of \$249,570.00 of winning transactions placed through a Luxbet account numbered 300162, held in the name of Peter James, on or about 13 July 2010.*
11. Mr Cockburn confirms that the disputed wagers, referred to in paragraph 10(a) above, were placed by Mr F using Mr J account without the notification to Luxbet as required under LBR 1.8.7. The Commission notes the discrepancy in the amount claimed on behalf of Mr F, as set out in paragraph 10 above, and the amount referred to by Mr Vouris in respect of voided transactions of \$239,570.00 (refer to paragraph 6 above).

12. Mr Cockburn submits that, in making the disputed wagers, Mr F was acting as the agent of Mr J, having obtained Mr J consent to do so as well as his account user name and PIN. Mr F has an existing Luxbet account in his own name and, in Mr Cockburn's submission, was a person who would have been eligible for approval by Luxbet under LBR 1.8.7.
13. Mr Cockburn refers to Luxbet's Term and Conditions (LTC) and in particular Term 10 which provides that "*A Client may only have one Account with Luxbet*". He submits that nothing in LTC 10 or LBR 1.8.1 to 1.8.10 allows Luxbet to void transactions alleged to be in breach of those Rules and the only option available to Luxbet was to hold the monies in dispute until such time as it was determined whether or not there had been a breach of the Rules.
14. Mr Cockburn submits, as a general proposition, that a breach of the Rules does not provide a basis on which Luxbet is entitled to void transactions and that in this instance the breach is merely technical and not a breach of an essential term. Mr Cockburn notes that the only Rule allowing for the voiding of transactions is LBR 1.4.3 which deals with attempted fraud on the part of a punter, which is not alleged in this case.
15. Mr Cockburn's submission refers the Commission to LBR 1.18.2 which provides: '*Luxbet will not adjust any wagers until a decision has been made by an authorised representative of the Racing Commission.*'
16. Mr Cockburn further submits that Luxbet's conduct in voiding the wagers made by Mr F must have lead to unjust enrichment in that Luxbet presumably bet back the transactions into totalizator pools. He also submits that all of Mr F's transactions '*were placed in good faith, in accordance with the betting rules and were confirmed by Luxbet's betting operator or website technology and the Luxbet Rules were otherwise complied with*'.
17. Mr Cockburn's submissions then move on to a discussion and criticism of the decision of the Manager Racing, dated 8 September 2010, in respect of Mr J original complaint to the Commission. He submits that decision was taken prior to Mr F being afforded an opportunity to make a complaint on his own behalf despite the Commission being aware of a potential claim or complaint by Mr F. Mr Cockburn reiterates that the claim by his client is a fresh dispute and that the Commission is not bound by the previous decision of the Manager Racing.
18. Mr Cockburn concludes his submission by setting out the relief his client claims as follows:
 - a. *The bets relating to the credits voided against Mr J account on or about 13 July 2010 in the sum of \$249,570.00 be declared lawful winning bets within the meaning of s 85 of the Racing and Betting Act*
 - b. *The credits in the sum of \$249,570.00 be reinstated, and transferred to the account of Mr F pursuant to LTC 10 and LBR 1.8.2*
 - c. *The credits to the account of Mr F in the sum of \$249,570.00 be offset by the current negative balance of Mr F's account in relation to the Luxbet Claim of \$49,266.71; such that the current balance of Mr F's account be deemed to be \$201,303.29*

- d. *The agreement between Luxbet and Mr J for Luxbet to provide credit of \$82,850 against the balance of his Luxbet account on or around 8 July 2010 not affect the resolution of the dispute as between Mr F and Luxbet. Or, in the alternative*
- e. *Luxbet pay Mr F the net sum of \$201,303.29, clear his account balance and close his account, in full and final settlement of both Mr F's claim against Luxbet and Luxbet's claim against Mr F.*

Submissions in response on behalf of Luxbet

19. Mr Simon Theodore, of Gadens Lawyers, provided written submissions in response on behalf of Luxbet, attached to a letter dated 24 January 2011. Those submissions were provided on a without prejudice basis for the sole purpose of responding to the submissions made to the Commission on behalf of Mr F.
20. Gadens submit that, in the context of Mr F's claim regarding his use of Mr J account, there is no contractual relationship between Luxbet and Mr F such as to permit Mr F to frame a complaint against Luxbet.
21. If the Commission determines that such a contractual relationship exists, Gadens submit that Luxbet has acted in accordance with its Terms and Conditions (LTC) and the LBR. It is further submitted Mr F must rely on the breaches of the LTC and LBR to establish a claim against Luxbet and, without reliance on the breaches, no such contractual relationship arising from the use of Mr J account by Mr F can be established. Gadens Lawyers submit a contractual relationship giving rise to the capacity to lodge a complaint can only be established between Luxbet and client whose account is in dispute, in this case Mr J.
22. The submission on behalf of Luxbet states that the LTC and LBR establish and govern the relationship between Luxbet and the client (Mr J) and that Mr F cannot rely on the LTC and LBR to establish his claim as he is not the 'client' so far as Mr J account is concerned and therefore does not have standing to bring the complaint.
23. In respect of the submission that Mr F was acting as Mr J agent when using his account, Gadens submit that the evidence is clear that Mr F, in placing wagers through Mr J account, was acting on behalf of himself and not placing the wagers in any capacity as Mr J agent.
24. The Gadens submission denies the assertion that Luxbet breached its LTC and LBR by voiding Mr F's wagers and states that the breaches of the LTC and LBR by Mr J and/or Mr F are not technical breaches but rather breaches of essential terms of the contract between Mr J and Luxbet. Gadens submit that LBR 1.8.7 is an essential term of the contractual arrangement on a number of bases, including compliance with Anti-Money Laundering and Counter Terrorism Legislation as well as commercial certainty on the part of Luxbet as to who it is dealing with.

Consideration of the issues

The effect of the breach of LBR 1.8.7

25. The construction of the terms and purpose of LBR 1.8.7 is crucial to the determination of this complaint. LBR 1.8.7 is set out in full in paragraph 7 above.
26. A breach of the LBR 1.8.7 is admitted, both by Mr J (in his letter to the Manager Racing (incorrectly) dated 3/8/2010) and by the lawyers acting for Mr F (bullet point 2 of Mr Cockburn's letter to the Commission dated 30 November 2010). The onus was on Mr J, as the account client, to notify Luxbet that he had authorised Mr F to utilise his account and that notification was required to be provided prior to Mr F commencing to utilise the account. It is not in dispute that Mr J did not notify Luxbet before Mr F began to use his account. In fact he did not notify Luxbet at all, nor did he provide Luxbet with Mr F's details as required by LBR 1.8.7.
27. The issue for consideration by the Commission is whether the breach of LBR 1.8.7, or any of the other matters raised in submissions from the parties, entitled Luxbet to lawfully void the wagers placed by Mr F using Mr J account.

Standing to bring the complaint

28. A threshold issue has been raised in respect of the standing of Mr F to bring the complaint against Luxbet.
29. In the letter dated 24 January 2011, Gadens Lawyers submit, on behalf of Luxbet, that Mr F is *'not capable of framing a complaint against Luxbet as the only existing contractual relationship in the context of this claim is between Luxbet and Mr J'*. Mr Cockburn, on behalf of Mr F, submitted that Mr F was entitled to bring the complaint on 2 bases. Firstly, that Mr F in placing the wagers through Mr J account was acting as Mr J agent. Secondly, although no approval was obtained from Luxbet for Mr F to use Mr J account, he was a person who would have been eligible for approval, being an existing and authorised account holder with Luxbet in his own right.

The Agency submission

30. The Commission is not convinced by either of Mr Cockburn's submissions. An agency relationship is created by the consent of both the agent and the principal, no one can unwittingly become an agent for another. Although a principal-agent relationship can be created by a contract between the parties, a contract is not necessary if it is clear that the parties intend to act as principal and agent. The intent of the parties can be expressed by their words or implied by their conduct.
31. It is clear from the materials before the Commission that neither Mr J nor Mr F had any intention of entering into an agency relationship. The initial request by Mr F to use Mr J account was contained in an email dated 15 June 2010 in which Mr F asked: *'Since your (sic) away I was wondering if its possible I might use your account and settle the lot on your return or at the end of the month with them or whatever is the arrangement?'*

32. Following Mr J agreement, Mr F then proceeded to use the account to place wagers of his own. There is no indication in any of the materials before the Commission that Mr F was placing wagers through Mr J account on behalf of or for the benefit of Mr J. To the contrary, the reason provided by Mr F for seeking to use Mr J account was for his own benefit because he was 'very short for avenues to off load bets ***I am receiving***' (emphasis added).
33. A further important element of a principal-agent relationship is the concept of control, the agent agrees to act under the control or direction of the principal. On his return from overseas Mr J became aware of the extent to which Mr F had been utilising his account. In an email dated 1 July 2010 Mr J advised Mr Keith Lamb of Luxbet '*I sent Steve (Mr F) a filthy email and told him my account had been cancelled. I'm sorry I got suckered into this because I was going overseas and he owed me basically what I owed Luxbet for the month and I asked him to pay it directly to you as it's a big hassle trying to do it from overseas. He then asked if he could place a couple of bets as he couldn't lay off.*'
34. It is clear from that email that Mr J was not authorising Mr F to use his account as his agent. He simply granted permission for Mr F to lay off 'a couple of bets' of his own. Mr J exercised no control over Mr F's wagering through his account whilst Mr J was overseas. To the contrary, Mr J was 'filthy' when he learned of the extent of Mr F's wagering via his account. The Commission is satisfied that no agency relationship existed between Mr J and Mr F so as to invoke any standing for Mr F to complain against Luxbet's actions in cancelling his personal wagers placed via Mr J account.

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35. The second element of Mr Cockburn's submissions in respect of Mr F's standing as a complainant is that, despite the fact he had not been authorised by Luxbet to use Mr J account he was a person who would have been so authorised, had Mr J complied with LBR 1.8.7, as Mr F is a person known to Luxbet as one of its account clients.
36. That submission is based entirely on hypothesis and has little persuasive or forensic merit in terms of the Commission's inquiry into the complaint. The Commission has seen no evidence whatsoever to suggest that had Mr J sought approval for Mr F to use his account that would have been approved by Luxbet as a matter of course. To the contrary, once Luxbet ascertained that Mr F was using Mr J account it took action to prevent further occurrences.
37. The submission that Mr F would have been approved as an Additional Authorised Party has Mr J made the request ignores the provisions of LTC 10 which provides:
A client may only have one Account with Luxbet.com, unless otherwise agreed with an authorised representative of Luxbet.com
38. In the Commission's view it is more probable that Luxbet would have refused to approve Mr F as an Additional Authorised Party in respect of Mr J account on the basis he already had an existing account with Luxbet in his own name. Allowing that Mr F's motivation for using Mr J account was that he was "short of avenues to offload bets I am receiving" the prospect of Luxbet

approving Mr F as Additional Authorised Party to Mr J account is even more remote.

39. In the Commission's view, in the context of the use of Mr J account by Mr F, there was no privity of contract, nor any other legal relationship, between Mr F and Luxbet so as to enliven any entitlement for Mr F to bring a complaint against Luxbet in these circumstances. For the reasons set out immediately above, Mr F has no standing to bring a complaint against Luxbet in respect of his unauthorised use of Mr J account and his claim against Luxbet must fail on that threshold point.
40. Having reached the decision that Mr F's complaint must be dismissed on the grounds of lack of standing, the Commission is minded to respond to the further submissions made on behalf of Mr F.

Seriousness of the breach of LBR 1.8.7

41. Mr Cockburn submitted that the breach of LBR 1.8.7 was a technical breach and not a breach of an essential term of the agreement so as to entitle Luxbet to void the wagers placed by Mr F. The Commission does not accept that submission. It is a fundamental and essential term of any contract that each of the parties to the contract is aware of who they are contracting with. In the circumstances giving rise to this complaint the contractual relationship was between Luxbet and Mr J. In the Commission's view, the use of the account by a third party, unknown to Luxbet at the time, does in fact constitute a fundamental breach of the contract. In the Commission's view, that breach was of sufficient gravity to enable Luxbet to invalidate the wagers placed by a person who was not a party to or privy to the contact between Mr J and Luxbet, subject only to LBR 1.18.2.
42. Luxbet is not only entitled to know who it is doing business with, it has a positive legal obligation to verify the identity of its account clients for the purpose of Anti-money Laundering and Counter Terrorism legislation, as well as for the purpose of ensuring that it is dealing only with persons whose actual identity is known to them.
43. The Commission acknowledges that not all infractions of the LBR would entitle Luxbet to void wagers that were otherwise placed in good faith. However, the Commission is satisfied that the breach of LBR 1.8.7 in this instance constituted a fundamental breach of an essential term of the contract with the result Luxbet was entitled to void the wagers placed by Mr F through Mr J account.
44. The submission that Mr F was in fact known to Luxbet on the basis of him having his own account does not progress Mr F's claim. An obvious question arises as to why Mr F wished to use Mr J account to place his wagers when he could have simply made the wagers via his own account. The reasons for him doing so are apparent in the email from Mr F to Mr J dated 15 June 2010, namely that Mr F '*was very short for avenues to offload bets I am receiving*'.
45. One inference to be drawn from that statement is that Mr F suspected that Luxbet would not accept the wagers if he attempted to place them through his personal account. That can only lead to the conclusion that Mr F intended to deliberately mislead Luxbet into assuming the wagers were being laid by

Mr J, with the likelihood that Mr F's involvement would be undetected and the wagers would be more likely to be accepted. It is difficult to see Mr F's action as anything other than an attempt to deceive Luxbet into accepting his wagers on the false premise they were laid by Mr J.

46. Mr Cockburn made further submissions in respect of unjust enrichment on the part of Luxbet in that he assumes that Luxbet presumably '*bet back these transactions into the tote pools and enjoyed significant consequential gains in its own right*'. Gadens Lawyers responded on behalf of Luxbet and submitted that the elements of unjust enrichment could not be made out by Mr F and that such a claim must fail.
47. As submitted by Gadens Lawyers, unjust enrichment is a legal term denoting a particular type of causative event in which one party is unjustly enriched at the expense of another, and an obligation to make restitution arises, regardless of liability for wrongdoing. Unjust enrichment is defined as a benefit by mistake or chance. Morally and ethically the one who gains a benefit that he has not paid for should not keep it to the rightful owner's detriment. A common example is when a party contracts to provide a service, but the contract is terminated prematurely due to a breach and the contractor unjustly receives no compensation for partial services rendered.
48. With respect to the claim on behalf of Mr F that Luxbet has been unjustly enriched through the betting back of Mr F's wagers, there is no evidence at all before the Commission to suggest that this has occurred at Mr F's expense. Further, whilst it is obviously common practice in the industry, no evidence has been presented to the Commission suggesting that Luxbet actually bet back into the wagering pools in this case. To the contrary, the submissions provided by Gadens on behalf of Luxbet state unequivocally that '*Luxbet did not bet back into the wagering pools as suggested in Mr F's submission*'. Without any evidence disputing the veracity of that submission the Commission is inclined to accept the submission as stated.
49. In his submissions to the Commission, Mr Cockburn notes that Mr F has a discrete interest in the voided transactions, distinct and separate from the James complaint. Mr Cockburn states that Mr F's complaint relates to a fresh dispute to that of Mr J.
50. The Commission agrees with those submissions and has treated Mr F's claim as a discrete and separate dispute to the James complaint. Mr J standing to lodge a claim against Luxbet, being the nominated account holder with an undisputed contractual arrangement with Luxbet must be treated differently to the claim of Mr F.
51. The Commission notes the provisions of LBR 1.18.2 (set out in full in paragraph 15 above). As acknowledged in Mr Cockburn's submissions, Mr J initially lodged a complaint regarding the voiding of Mr F's wagers. Whilst he could have done so, Mr J did not complain regarding the apparent breach of LBR 1.18.2. The James complaint was "settled" following negotiations between himself and Luxbet, as evidenced by the correspondence dated 8 September 2010 from the Manager Racing to Mr J.
52. The Commission agrees that the terms of LBR 1.18.2 prevent Luxbet from adjusting disputed wagers prior to a decision of the Racing Commission. However, the dispute between Mr J and Luxbet was resolved by negotiation

between those parties. Whether or not the wagers were adjusted before or after those negotiations were concluded is a moot point. Regardless, this is not an issue that Mr J has raised and it was the balance of his account, not Mr F's, that was adjusted.

53. The Commission makes the following additional observation. In a letter dated (incorrectly) 3/8/2010 to the Manager Racing, Mr J states that Mr F *'placed a series of bets with my permission starting Saturday June 19th under my account and consequently was unsuccessful and lost \$12,000. Wednesday June 23rd under my account and consequently was successful and won \$31,850.'*
54. For the reasons set out above, the Commission has determined that Luxbet was entitled to void the wagers placed by Mr F through Mr J account. The Commission assumes that Luxbet also voided Mr F's losing wagers placed on 19 June 2010. If that is not the case, the Commission directs that Luxbet credit Mr J account with the losing wagers.

Decision

55. The Commission has determined to resolve this gambling dispute in favour of Luxbet. The decision rises and falls on the construction of LBR 1.8.7 and the fact that Mr J did not comply with the terms of that Rule. As a result the Commission concludes that Mr F was not an Additional Authorised Party in respect of his use of Mr J account. The fact that Mr F already had an account with Luxbet is immaterial to the operation and effect of LBR 1.8.7. Where written authority, including the required details of the proposed additional user, is not provided to Luxbet prior to the account being used by a person other than the account holder, there can be no claim that Mr F was an Additional Authorised Party so as to entitle him to lodge a complaint regarding Luxbet's treatment of Mr J account.
56. For the reasons set out above, the Commission has determined that Luxbet was entitled to void the wagers placed by Mr F once it ascertained that the wagers were not placed by Mr J and that Mr F was not authorised in accordance with LBR 1.8.7.
57. The Commission notes that the onus was with Mr J to notify Luxbet that he proposed to allow Mr F to use his account. He did not do so. Mr F did all that he was able to do, he asked Mr J for permission to use his account and the permission was granted, including Mr J advising Mr F of his account details and his PIN.
58. However, on the basis of the Commission's finding that Mr F was not authorised by Luxbet to use Mr J account, he has no standing to bring a complaint in respect of Luxbet's dealings with that account and voiding the relevant wagers. Mr F's potential private claims against third parties are matters personal to him and therefore beyond the scope of the Commission's jurisdiction.
59. The practical effect of a common sense interpretation and application of Rule 1.8.7 is that Mr F at no time held a valid claim to any of the proceeds from the unauthorized wagers placed by him using the account of Mr J. Luxbet are entitled to believe that accounts are being operated in good faith and within the ambit of the LBR provided to clients. As such funds lost via wagers that have been placed in contravention of the rules, but accepted in good faith by

Luxbet must remain with Luxbet. There is no evidence to suggest that Luxbet accepted any bets once it had been determined that the account of Mr J was being used by an unauthorized third party.

60. Had Luxbet accepted wagers while aware that the account of Mr J was being accessed and operated by an unauthorized third party, Luxbet would have been operating in contravention of its own LBR. A legitimate claim for the claw back of lost amounts may have been established at this time. Further, Luxbet would have been operating in contravention of a number of regulations under the Act as well as the Anti Money Laundering and Counter Terrorism legislation. No evidence has been presented to the Commission to indicate that this actually occurred.

Philip Timney
Presiding Member

3 March 2010