TRANSCRIPT OF

PROCEEDINGS

TRAINING DISPUTES TRIBUNAL

MR B. FORREST, Chairman

EXTRACT OF PROCEEDINGS

DECISION (Via Video)

BUSUTTIN RACING

- and -

SIMON RALEIGH

MONDAY, 17 MAY 2021

CHAIRMAN: The subject of this action is a disputed claim for training fees made by Busuttin Racing (herein referred to as "BR") against Mr Simon Raleigh (herein referred to as the "respondent"). The proceedings are governed by the Trainers And Owners Reform Rules incorporated in the Australian Rules of Racing from 1 August 2017. A Standard Training Agreement, and a Co-owners Agreement, which apply to arrangements between owners and trainers, was also introduced. These rules are to be read in conjunction with the Training Disputes Tribunal Rules 9A to 9C inclusive in the Local Rules of Racing.

The respondent is the sole owner of the filly Cop A Clip and the majority owner of Focus On Fame and Growl. In September 2020 the respondent transferred the three horses to BR.

At her first start for BR, Cop A Clip ran second in a Cranbourne maiden. Next start at Sandown on 9 December, Cop A Clip was unplaced.

The respondent was displeased following that race. He believed BR should have applied a tongue tie. In an email to BR on 31 August, the respondent had mentioned the horse had had a tie-back operation when in the care of a previous trainer. The unplaced run he attributed to the horse choking down due to the absence of a tongue tie. He asserted BR was negligent, thereby causing him financial loss. BR said a tongue tie was not used during training or the previous Cranbourne race.

On 11 December, the respondent transferred the three horses to the Maher/Eustace stable.

The BR November account for the three horses was $7629.14. On 1 February 2021, the respondent paid $4551.70. He deducted $3077.44, comprising a combination of training fees, veterinary fees and expenses which he said were:

> *Fees and expenses deducted for failure to use tongue tie at Sandown, with the result Cop A Clip choked down.*

BR disputed the deductions and referred the dispute to Andrew Nicholl, CEO of the Australian Trainers Association.

On 10 February 2021, BR lodged an Enforcement Action Application with Racing Australia for recovery of fees then claimed to be owing.

On 12 February, Nicholl emailed the respondent that $2000 is the minimum BR will accept in full and final discharge of the respondent's financial liability to BR.

On 18 February the respondent paid $2000 to BR by electronic transfer and emailed Nicholl:

> *I have paid $2000 in full and final settlement of all moneys claimed by BR to be owing.*

A series of emails followed on 25 February.

Nicholl informed the respondent that BR accepted the $2000 payment as full and final for all outstanding training moneys due for Cop A Clip. The respondent replied that he assumed the payment was accepted in full settlement of all moneys owing by TJS Bloodstock, whether for Cop A Clip or any other horse. Nicholl then replied:

> *Why have you co-mingled? I had assumed the $2000 was for Cop A Clip.*

He also queried whether there were concerns or disputes with other horses. Then the respondent to Nicholl:

> *There were no other concerns.*

The respondent added that he received one statement for all horses and his payment was in relation to that statement.

Nicholl to the respondent:

> *I have a clear picture from BR: (1) November and December invoices, fees outstanding for Growl, $501.60, first acceptance, Blue Diamond and Golden Slipper. Focus on Fame, $2285.25; training/vet/race plates. (2) November and December invoices, fees outstanding for Cop A Clip, $3077.44, vet/training. In total, $5864.29.*

In the New Zealand High Court case, Homeguard Products (New Zealand) Ltd

v Kiwi Packaging Ltd, the Court regarded the retention and banking of a cheque as conclusive evidence of assent to the conditions on which it was sent. That decision was not followed in McMahons (Transport) Pty Ltd v Ebbage [1990] 1 Qd R 185, a case in which a cheque which was tendered in full and final settlement of all claims was negotiated by the recipient. The court rejected an argument that it was not open to keep and negotiate the cheque, while preserving the right to sue for additional sums. Pincus JA in his judgment observed that the cases on conditional tender, though numerous, give no clear guidance. See the discussion headed Accord and Satisfaction at pages 194 to 196 of the judgment.

The question for determination in the present case is whether BR, in accepting the $2000, did so in full settlement of all claims for the three horses, that is, upon the terms the respondent asserts the payment was made. If the answer is in the affirmative that BR acquiesced in accepting the payment on such terms and it would follow that BR is precluded from further recovery action.

When Nicholl emailed the respondent his instructions of the minimum amount BR would accept in full and final settlement, I am comfortably satisfied he was referring to the disputed account balance of $3077.44 for Cop A Clip.
The subject heading of his email was, "Cop A Clip Unpaid Training Fees."
The dispute was not about Focus On Fame or Growl. There were no issues with either horse, as the respondent acknowledged when Nicholl sought clarification of that question.

On the evidence before the Tribunal, I am satisfied BR did not accept the basis upon which the respondent asserts the $2000 was paid. What that payment achieved was a full settlement of the Cop A Clip claim of $3077.44.

The facts do not in my opinion support the drawing of an inference to the contrary. The conditions sought to be imposed by the respondent on payment was unacceptable to BR, in that it unilaterally sought to preclude BR from recovering fees for Focus On Fame and Growl.

The respondent submitted that if the payment was not accepted on his stated terms, it was open to BR to return it. That submission appears to me to ignore a commercial reality, that of a creditor's reluctance to return a payment in circumstances where a further sum is claimed to be owing.

In conclusion, I have come to the view that on all the evidence before me, fees and expenses in total of $2786.85 for Growl and Focus On Fame remain unpaid.

Accordingly, the Tribunal orders that on or before 31 May 2021:

(1) the respondent pay to BR $2786.85;

(2) BR deliver to the respondent the identification card for Focus On Fame.
