Neutral Citation [2015] IEHC 352

THE HIGH COURT

[2012 No. 11788P]

BETWEEN

MICHAEL O'REILLY, MARTIN O'REILLY, and CLAUDIA REISS

PLAINTIFFS

AND

EDWARD JOSEPH LOGAN and EDEL LOGAN

DEFENDANTS

JUDGMENT of Mr. Justice Keane delivered on the 5th June 2015

Introduction
1. The issue at the centre of this case is whether the plaintiffs are contractually entitled to a sum from the defendants equivalent to 20% of the sale price of a chestnut mare named Tashzara ("the horse").

The parties
2. The first plaintiff is a satellite television engineer from Kildare town, who has had a lifelong interest in, and involvement with, racehorses. The second plaintiff is a work rider and former professional jockey, living in Portarlington, County Laois. The first and second plaintiffs are brothers. The third plaintiff is a stable hand and is the partner of the second plaintiff, with whom she has two children.

3. The defendants are husband and wife. The first defendant was employed as a building contractor before entering the bankruptcy process in another jurisdiction. The second defendant works in the home and, having previously performed a secretarial role in her husband's business, has more recently established a small business of her own.

Facts not in dispute
4. At the first plaintiff's suggestion in early 2009, he took possession of the horse (then a two year old filly) from the first defendant at a yard ("Canty's yard") owned by one Joseph Canty at the Curragh, County Kildare, which was rented or used by a registered trainer named Christopher Philips. Prior to that, the horse, which was in poor condition and had not yet been broken in, was kept together with others on the first defendant's lands. Until the first plaintiff became involved with the horse, the first defendant had not intended to spend much money on her or to train her, as he did not then rate her too highly. He had been considering having the horse covered by a piebald stallion.

5. Pursuant to an arrangement between the parties, the first plaintiff managed the horse for a period from February 2009 onwards. Anthony Kelly, a retired jockey and trainer known to the plaintiffs, broke in the horse with the assistance of the third plaintiff. Thereafter, from March 2009, the second plaintiff rode out on the horse for an hour a day, six and, sometimes, seven days a week. The third plaintiff fed, walked and brushed the horse and mucked out its stable for an average of two and a half hours a day from Monday to Saturday, and for approximately an hour on Sunday.

6. While the plaintiffs provided these training services out of Canty's yard, it is common case that Mr Christopher Philips was the registered trainer in respect of that yard (and in respect of the horse at that time) and that neither the first plaintiff nor either of the other two plaintiffs is a registered trainer.

7. During the period she spent in Canty's yard, the horse ran in three races: on the 16th September 2009 at Beverly, Yorkshire, where the horse finished third; on the 7th October 2009 at Navan, County Meath, where the horse finished second; and, on the 31st October 2009 at Newmarket, Suffolk, where the horse finished sixth.

8. In November 2009, the horse was removed from Canty's yard by the first defendant and was transported to the yard of a trainer named Patrick Gallagher in California in the United States. Over the next two years, the horse ran six times in California, coming second on four occasions and third on two occasions, and earning approximately $40,000 or $50,000 in prize money. The horse returned to Ireland in or about January 2012 and was subsequently sent to Coolmore Stud to be covered there by a stallion named "Fastnet Rock."

The central issues in dispute
9. In anticipation of the proposed sale of the horse by the defendants, a plenary summons issued on behalf of the plaintiffs on the 21st November 2012. An application for an injunction to restrain the sale of the horse pending the determination of these proceedings was settled on the basis that the sale should go ahead at Tattersalls' December Mare Sales at Tattersalls' Newmarket premises subject to the retention pending trial of 20% of the net sale proceeds in an account jointly held by the parties' solicitors. The Court is given to understand that the horse was in fact sold for £315,000 and that the sum of €61,189 is currently held on account.

10. It is perhaps worth noting that the sale price realised in respect of the horse may have been in no small part due to that fact that it shares a dam with the champion colt "Excelebration", which was considered one of the best horses in the world while racing as a three and four year old in 2011 and 2012 and which has since retired to stud at Coolmore. This, of course, cannot have been a significant fact within the contemplation of any of the parties in respect of whatever arrangement was entered into between them at the beginning of 2009, as the stellar exploits of Excelebration had not then taken place.

11. In the undated statement of claim delivered on behalf of the plaintiffs, it is pleaded that the plaintiffs and the first defendant entered into an agreement on or about the 30th January 2009, whereby the first plaintiff was to manage the horse in consideration of a 10% share in its ownership and €700 per month in expenses from the first defendant, the second plaintiff was to ride out and exercise the horse in exchange for a 5% share, and the third plaintiff was to care for the horse and to muck out its stable in consideration for a 5% share.

12. In the defence delivered on behalf of the defendants on the 3rd July 2013, the existence of the agreement contended for on behalf of the plaintiffs is denied and, by extension, it is denied that the plaintiffs are entitled to any portion of the proceeds from the sale of the horse. The defendants plead, instead, that the only agreement made was one between the first defendant and first plaintiff whereby the first plaintiff was to prepare the horse for training and to train the horse in consideration for a payment of €700 per month, as remuneration inclusive of expenses. The defendants assert, and rely upon, the existence of a custom or practice (described as an industry norm) whereby, if the horse had been sold while it was being trained out of Canty's yard by the first plaintiff, the first plaintiff would have been entitled to receive 10% of the negotiated sale price of the animal. Of course, no such sale took place.

13. Although it is not expressly pleaded in the defence, part of the defendants' case at trial was that, prior to the sale of the horse in December 2012, the first defendant had transferred his ownership interest in it to his wife, the second defendant.

The plaintiffs' case

14. The first plaintiff gave evidence that he became acquainted with the first defendant some time prior to the events at issue. He stated that he met the first defendant at the latter's home in Kildare in January or February 2009. He stated that he observed a number of animals in a field there, including a large number of piebald ponies. The horse was also in the field. The first defendant informed him that he did not intend to race the horse but, instead, planned to have her covered by a piebald stallion.

15. The first plaintiff stated that the horse was in very bad condition when he first saw her. He testified that he suggested to the first defendant that the horse be given a chance in racing. He stated that it was then agreed between them that the horse would be brought to Canty's yard. He stated that he agreed with the first defendant that he and the other two plaintiffs would provide for the upkeep, care, and training of the horse in return for a 20% ownership stake in it. He was to receive a 10% share and the second and third named plaintiffs were to receive 5% each.

16. The first plaintiff stated that it was further agreed between them that the first defendant would pay him €700 a month in order to discharge the expenses associated with the upkeep and training of the horse.

17. The first plaintiff continued that in the week after he had reached agreement with the first defendant, all three plaintiffs met with the first defendant at the latter's premises in Kildare. At that meeting, the second and third plaintiffs confirmed their acceptance of the terms of the agreement between the parties.

18. The first plaintiff stated that a further discussion subsequently took place between the plaintiffs and the first defendant at Canty's yard where all four parties again confirmed the terms of their agreement and the respective roles of the plaintiffs in relation to it. The first plaintiff described the agreement between the parties as a "gentleman's agreement", conceding that it had never been reduced to writing.

19. A significant factual controversy in evidence was whether the agreed payment of €700 per month by the first defendant to the first plaintiff, would have provided any meaningful remuneration for the plaintiffs' work, after the expenses associated with the horse's training and upkeep had been defrayed.

20. The first plaintiff stated that the rent on the stable in which the horse was kept was €260 per month, that the cost of feed was approximately €180 a month, and that hay for the horse cost approximately €30 a month. He further stated that he paid €100 per month for a nutritional supplement for the horse known as Stride, which is used to improve a horse's condition. He testified that, in addition, he paid for certain other supplements, such as salt lick, cod liver oil and bran, and for various creams and sprays for the horse and that he covered the cost of the horse's dental care, although he accepted that the first defendant discharged the horse's veterinary bills, travel expenses, race entry fees and jockey fees. In short, the first plaintiff's evidence was to the effect that nothing remained of the €700 paid to him monthly by the first defendant once the expenses associated with the upkeep and training of the horse had been discharged and that the only net financial benefit accruing to the plaintiffs from the arrangement was the value of their ownership interest in the horse.

21. The first plaintiff continued his evidence by stating that the parties became excited by the progress that the horse made in training and on the gallops, and that this resulted in the decision to enter her in the races already described. The first plaintiff referred, in particular, to an interaction which allegedly occurred in the immediate aftermath of the Navan race. He stated that, during the celebrations in the aftermath of the horse's second place finish in that race, he remarked, in the first defendant's hearing, that some prize money would now be coming their way. The first plaintiff testified that the first defendant immediately stated that he had never agreed that the plaintiffs should have a 20% ownership interest in the horse but, rather, that they would have an entitlement to 20% of the sale price in the event of the horse being sold. The first plaintiff stated that he viewed this as the first defendant moving the goalposts in relation to their agreement and deviating from what had been previously agreed between the parties.

22. The first plaintiff stated that the he understood that an offer to purchase the horse for €70,000 was made at about that time but that he horse failed to obtain a necessary veterinary certificate because it was found to have a chipped bone.

23. In answer to his Counsel, the first plaintiff testified to his understanding that, at the material time, top trainers would have charged approximately €2,000 a month for their services whereas middle ranking trainers would have charged €1,300. He reiterated that it was simply not possible for him to earn an income from the €700 per month that the first defendant had agreed to pay towards the training of the horse and that, moreover, the first defendant's payments to him were irregular and frequently fell short of that figure.

24. Under cross-examination, the first plaintiff was asked why he had not asserted a claim or initiated proceedings when, as he perceived matters, the first defendant altered the terms of their agreement after the race at Navan or when the first defendant moved the horse to California. The first defendant responded that, at the time, he did not want to antagonise the first defendant and that, in relation to the move to California, he had accepted the first defendant's statement that his (the first plaintiff's) investment was safe.

25. The first defendant accepted that he did not contribute to the horse's training, transportation or upkeep expenses while it was in California. However, the first plaintiff did not accept that this meant that he was seeking a free ride in relation to the subsequent sale of the horse, pointing out that, in his view, the horse was believed to be worth only €600 when he began training it.

26. The first defendant acknowledged that, although it was pleaded on behalf of the plaintiffs that he had chosen the jockey for each of the three races in which the horse was entered before travelling to California, he had in fact only selected the jockey for the Navan race and that the first defendant had selected the jockey for the Beverly and Newmarket races.

27. The second plaintiff was next called to give evidence. He testified that, while he had previously been a professional jockey, his main employment at the material time was as work rider for a well-known trainer in Kildare. He stated that, at the same time, he and the first plaintiff operated a partnership business training horses out of Canty's yard.

28. The second plaintiff stated that he became involved in the events in issue when the first plaintiff rang him up and asked if he was interested in taking a share in a filly. He said that, along with the other two plaintiffs, he met the first defendant at the latter's premises. He stated that he observed the horse there in very poor condition out in a mucky field with little or no grass and felt sorry for it. He stated that, on that occasion, the parties discussed the terms of an agreement. He testified that it was agreed that the first plaintiff would take a 10% stake in the filly, while he and the third plaintiff would take 5% each. He stated that he had been in told in advance of the terms of the proposed agreement by the first plaintiff.

29. As regards his work with the horse, the second plaintiff gave evidence that he did not do very much for the first few weeks as the horse needed to be broken in. He stated that the breaking in was largely done by Anthony Kelly, who did not receive any payment for that work, and that the third plaintiff did a significant amount of work to prepare the horse for training.

30. The second plaintiff testified that, once the horse had been broken in, he rode her out for approximately an hour a day in the afternoons, six days a week. He gave evidence that if he had been charging a fee for the service he would have charged €20 per day, which would work out at a figure of approximately €120 a week. In the event he was paid nothing for his work on the horse. He said that he undertook the work on the horse because he understood himself to have a 5% ownership interest in it and that he would not otherwise have done so for no reward.

31. The second plaintiff stated that the first defendant kept him informed of the horse's progress while it was in California and that, on one occasion, he went to the defendants' house where he watched a race at Santa Anita in which the horse came second. He also stated that, on one occasion, the first defendant had said to him "we will have a nice Christmas yet" by reference to an agreement that the second plaintiff understood had been made to sell the horse for €150,000 in the event that she won her maiden while in the United States. The second plaintiff expressed the view that the horse was unlucky not to do so. The second plaintiff acknowledged the existence of an industry norm whereby a trainer is considered entitled to 10% of the proceeds of sale of any horse sold out of his yard. However, he asserted that the agreement between the parties in this case was specific and quite different.

32. Under cross-examination, it was put to the second plaintiff that he did receive a benefit from the payment of €700 per month made by the second defendant to the first plaintiff. The second plaintiff acknowledged that the training partnership he operated with the first plaintiff would have had lower overheads than the operations of larger registered trainers, in particular if it was not tax compliant. Of course, in fairness to the plaintiffs, it is not unreasonable to observe that, in all likelihood, their partnership had less income and fewer economies of scale than such operations. In any event, the second plaintiff remained adamant that he did not receive any payment whatsoever in relation to the horse.

33. When asked why he had not moved against the first defendant when the horse was sent to California in 2009 without consultation with the plaintiffs, the second plaintiff replied that he considered that he was still involved in the training of the horse during the period in which it was in the California. He gave evidence that the first defendant frequently rang him and asked his advice in relation to the training of the horse during the time it was in the California.

34. It was also put to the second plaintiff that the only reason the horse became valuable was that its brother Excelebration began to enjoy great success. He accepted that to be the case but added that the horse ran some very good races, and that its own success began, during its time in Canty's yard.

35. It was put to the second plaintiff that, if the plaintiffs were claiming a 20% ownership interest in the horse, then why had they not assumed responsibility for 20% of the costs of maintaining the horse while it was in California, which, it was suggested, amounted to $60,000. The second plaintiff responded that his ownership interest derived from the agreement he had entered into to train the horse and that he had continued to contribute to its training in California by providing advice to the first defendant in that regard on the telephone. In re-examination on that point, the second defendant expressed his understanding that the horse had won approximately $50,000 in prize money while in California and that he had not received any share of that sum.

36. The second plaintiff was cross-examined in relation to an issue that arose from the replies to particulars filed on behalf of the plaintiffs on the 6th of March 2013. In elaborating in those particulars upon the plea in the statement of claim that relations between the parties irrevocably broke down in June 2012 because of monies owed to the first and second plaintiff by the first defendant, certain details had been provided concerning monies allegedly owed by the first defendant to the second plaintiff for looking after "a 3 year old filly by [a horse named] Oratoria" for 9 months at €1,200 per month. Under cross-examination, the second defendant accepted that this latter assertion, which does not form the basis of any part of the plaintiffs' claim for damages in these proceedings, had been made in error and that it was factually wrong to claim that costs of €1,200 per month had been incurred in looking after that animal. It was put to the second defendant that he was resiling from that plea in evidence because he had become aware that a witness was available to refute it. The second plaintiff did not accept that.

37. The third plaintiff gave evidence that she had worked as a stable hand since she was sixteen years old, although she had broadly ceased to do so by the time of the events which form the subject matter of these proceedings, having become a full-time homemaker.

38. The third plaintiff testified that she went to the first defendant's home with the other plaintiffs and saw the horse. She too stated that the filly was in very poor condition and that she felt sorry for it. She also gave evidence that an agreement was reached between the parties in the terms already described by the other plaintiffs. She further testified to a conversation between the parties on the day the horse arrived in Canty's yard during which the first defendant asked the plaintiffs whether they were still happy with their percentage and they confirmed that they were.

39. The third plaintiff described the work she did with the horse. She stated that she fed the horse, cleaned her stable, walked her out, brushed her, and assisted in breaking her in. She said that she spent two and a half hours a day, six days a week, and an hour on Sunday working with the horse during her time in Canty's yard. She was not paid for this work but understood that she was to receive a 5% stake in the horse in consideration for it. The horse came on well after its arrival at Canty's yard and its condition and appearance improved rapidly. The third plaintiff attended all three of the races in which the horse ran before it left the yard.

40. The third plaintiff testified that she became concerned in relation to the agreement with the first defendant when he indicated at the Navan race that he was going to retain the prize money in the pot to cover entries in future races. The third plaintiff stated that, from that point onwards, she suspected that the first defendant might further resile from the terms of their original agreement, but

only became convinced of that when she discovered from the first plaintiff that the horse had been entered into a sale by the first defendant without informing the plaintiffs.

41. Under cross-examination, the third plaintiff stated that, together with the other plaintiffs, she had attended at the first defendant's house to watch one of the horse's races in California.

42. The final witness called on behalf of the plaintiffs was Anthony Kelly. Mr Kelly gave evidence that he works as a horse trainer and is a retired jockey currently living in Naas. He is a friend of both the first and second plaintiff. At the time of the events relevant to these proceedings he was working in the stables of Mr Philips.

43. Mr Kelly testified that he sometimes rode out horses from Canty's yard. He stated that, on one such occasion, he overheard a conversation in an adjacent stable in which the first defendant asked the second and third plaintiffs whether they were each happy with their 5%.

44. Mr Kelly confirmed that he broke in the horse. He also stated that the third plaintiff put in a lot of work on the horse during that period and that its condition improved rapidly. Mr Kelly testified that breaking in the horse took about a month and that he took his time with it on the basis that she had previously been in such poor condition.

45. Under cross-examination, Mr Kelly denied that he had any business relationship with the plaintiffs or that he received any payment for breaking in the horse beyond petrol money.

The defendant's case

46. The first defendant gave evidence that he initially met the first plaintiff when the latter installed satellite television in his home. He stated that the first plaintiff had asked him to give him horses to train on a number of occasions, beginning in 2008, to which he had responded by reminding the first plaintiff that, while the first plaintiff and his brother were interested in flat horses, his involvement was with national hunt horses.

47. The first defendant acknowledged that, prior to entering into an agreement with the first and second plaintiff, it had not been his intention to spend much money on the horse because he did not then rate her very highly and had, indeed, been planning to have her covered by a piebald stallion. Under cross-examination, the first defendant acknowledged that the horse's breeding had been considered poor until her half-brother began to excel.

48. The first defendant testified that he agreed to send the horse to Canty's yard for a three month trial and that he agreed to provide €700 per month to cover her training expenses. He also agreed to discharge the veterinary expenses of the horse. The horse was delivered to Canty's yard by the first defendant and his brother, when the second and third plaintiffs were present there. At the time, the first defendant's brother co-owned the horse. The first defendant testified that he did not return to the yard at all during the first month after the horse's arrival there. He visited the yard after five weeks or so had passed. He spoke to the first plaintiff several times about the progress of the horse. After three months or so, he went over to the yard and watched the second plaintiff riding out the horse. Everyone was beginning to get excited about the horse's progress.

49. The first defendant expressly denied the evidence of the plaintiffs and of Mr Kelly in relation to a conversation occurring at the stables in Canty's yard in which the first defendant enquired of the second and third plaintiff whether they were happy with their 5% share in the horse. He testified that no such conversation ever took place.

50. The first defendant stated that the first and second plaintiffs selected the first race the horse ran at Beverly and the second at Navan. The horse was transported in a borrowed horse box. The first defendant paid for transport and accommodation for the second plaintiff in relation to the Beverly trip. After the race at Navan, an approach was made to purchase the horse for €150,000. It was rejected. The first defendant stated that the first plaintiff never approached him regarding prize money and specifically denied the exchange that the first plaintiff alleges took place between them after the Navan race. The first defendant said that he had told the first plaintiff that, if the horse was sold, he would be entitled to 10% of the sale price. Subsequently, the horse failed a veterinary test, which left him very disappointed. The first defendant added that after the horse finished 6th or "mid-division" at Newmarket its value, in consequence, declined.

51. The first defendant testified that the cost of transporting the horse to California was €9,000 and that the monthly cost of keeping the horse in stables there was $3,200. He gave evidence that the horse ran six times during its time in the U.S. between 2010 and 2012. He stated that the horse won prize money of $40,000 during that period, all of which was spent on training fees. He also gave evidence that the horse got injured during her time in California and that she had to go into a home for injured horses, which cost $2,500 per month. The first defendant testified that none of the plaintiffs were involved in the training of the horse while it was in California and specifically denied the claim made by the second plaintiff that he had consulted him in relation to the training of the horse during that time. In February 2012, the horse was sent to Coolmore stud farm to be covered at a cost of €40,000, which was not paid until the horse produced a foal. He also denied that the plaintiffs had attended at his home in order to watch one of the horse's races during its time in California.

52. Under cross-examination, the first defendant acknowledged that, just like the plaintiffs, he has no documentation to evidence the terms of the agreement that he contends for. The first defendant also accepted that, when entering into that agreement, he did not have any difficulty with the fact that the first plaintiff was not a registered trainer nor with making payments to the first plaintiff in cash.

53. When cross-examined about the ownership of the horse, the first defendant stated that, after the disappointment of the Newmarket race and the failure of the veterinary test, he bought out his brother's interest in the horse for €10,000 and another horse in part-exchange. When the horse returned from California in January 2012, it remained in his ownership until it was subsequently transferred into his wife's name. The first defendant testified that this occurred because his wife, the second defendant, raised and paid the €30,000 in outstanding fees and transportation costs to secure the return of the horse from California. The first defendant stated that the second defendant did so for sentimental reasons, because the name of the horse – "Tashzara" – is a composite of the names of the defendants' daughter Zara and niece Natasha. The first defendant also appeared to suggest that the second defendant assumed responsibility for the Coolmore stud fee of €40,000 in respect of having the horse covered by "Fastnet Rock" in February 2012. What became of the resulting foal was not addressed in evidence. The first defendant stated that he did not have the funds to discharge the various costs just described because his building business ran into financial difficulties and he is currently going through the bankruptcy process in England.

54. The second defendant was the next witness called. She gave evidence that she borrowed money from her father-in-law and from

the credit union to discharge both the outstanding costs incurred by the horse in California and the transportation costs necessary to bring the horse back to Ireland, after which the legal ownership of the horse was transferred into her name. The second defendant also stated that her desire to own the horse stemmed from the sentimental value that she attached to its name.

55. Under cross-examination, the second defendant denied that the transfer of ownership of the horse from her husband to her was done in an attempt to put that asset beyond the reach of his creditors in the context of his impending or accomplished bankruptcy. Rather, the second defendant testified that her husband had lost interest in everything as a result of his financial difficulties and that she had to think about the future and looking after their children.

56. The second defendant further testified that none of the plaintiffs attended at the defendants' home in Kildare to watch any of the horse's races when it was in California.

57. The final witness to give evidence was Mr David Mooney. Mr Mooney owns a stud farm in Portarlington, County Laois. He testified that, in 2011, the second and third plaintiffs approached him looking for livery for a few animals. They subsequently moved in a few horses, although no money changed hands. A horse that he described as the Oratoria filly arrived in April 2012. Mr Mooney's wife was ill at the time and the second and third defendants fed his animals for him. The first defendant installed satellite television in his house. Under cross-examination, Mr Mooney accepted the second and third named defendants exercised his horses in exchange for the livery that they received for their horses and that the arrangement amounted to barter.

58. When the filly arrived she was too small and she was let out for the Summer to help her develop. The filly was broken in by Mr Kelly in December 2012. Mr Mooney subsequently decided that he wanted to clear out all of the horses on his land, including the Oratoria filly. He telephoned the first defendant to tell him that he wanted the Oratoria filly removed and the first defendant's father collected her in September 2013. He stated that, at the time, the first and second plaintiff were charging ludicrous money as fees in relation to keeping the Oratoria filly and they told him that he would get paid when they got paid.

59. Under cross-examination, Mr Mooney testified that when the filly arrived at his farm it was in stables for a maximum period of ten days and was back out in the paddock after that. A farrier shod the filly on one occasion during the period it was on the farm and Mr Mooney paid for it, as he was getting his own horse done at the same time. The first defendant's father paid Mr Mooney a figure equivalent to €20 per week for the period when the filly was on grass. Mr Mooney did not ask the plaintiffs for payment for looking after the horse nor did he bill them. He testified that, while that might sound strange, his wife had died and he had lost interest in that aspect of his affairs.

60. The defendants submit that Mr Mooney's evidence goes to the credibility of the second plaintiff's evidence and, by extension, to the credibility of the plaintiffs' case, in that it is pleaded on behalf of the plaintiffs that relations between the parties irrevocably broke down in June 2012 "due to monies due and owing to the plaintiffs in respect to other horses for services rendered to the first defendant by the plaintiffs" and that plea was later further particularised in material part on the 6th March 2013 by the assertion that "the second plaintiff is owed monies for looking after a 3 year old filly by Oratoria for 9 months at €1,200 per month, which is increasing on a monthly basis as he still has the horse."

Conclusions

61. I have considered, as carefully as I can, all of the evidence summarised in the preceding part of this judgment. There is a fundamental conflict of evidence between the parties concerning the terms of the agreement entered into between them in or about January or February 2009 and also concerning the extent, if any, to which those terms were subsequently altered or amended.

62. When the plaintiffs took possession of the horse in January or February 2009, little was expected of it and little value was attributed to it. It had not previously been intended that the horse should ever race. On the uncontroverted evidence before me, significant recognition is due to the plaintiffs for the manner in which the horse was conditioned, broken in and trained as demonstrated by its subsequent creditable performances on the turf.

63. The serendipity whereby the horse's half brother subsequently excelled, thereby greatly increasing the horse's breeding value, could not have been anticipated by any of the parties in early 2009. Nevertheless, the first plaintiff's suggestion that the horse should be given a chance to race and the plaintiffs' efforts in breaking in and training the horse obviously contributed very significantly to the propitious circumstances in which the horse was so profitably sold in 2012.

64. I do not think that the invocation by the defendants of the custom and practice in the horse racing industry whereby a trainer receives 10% of the proceeds when a horse is sold out of the trainer's yard adds very much to the case, one way or the other. The defendants themselves were at pains to emphasise that the first defendant was not a registered trainer and that the registered trainer of the horse was Mr Philips. Those facts alone deprive of any real force the first defendant's *ex post facto* assertion that he would have paid the first defendant 10% of the proceeds if the horse had been sold out of Canty's yard. Moreover, while acknowledging the fundamental differences between the parties concerning certain of its central terms, the general tenor of the agreement in this case does not seem to me to conform to any obvious or identified industry norm. Most notably, the first plaintiff was not a registered trainer, the agreement was not evidenced in writing, and no paper work whatsoever, such as invoices or receipts, was ever generated in connection with it.

65. I do not believe that the resolution of the fundamental conflict between the parties concerning what was agreed between them in relation to the ownership of the horse requires the rejection of the evidence adduced on behalf of one side or the other in this case as deliberately false. Rather it seems to me perfectly understandable that the recollection of witnesses may be honestly in error in relation to the terms of an agreement that, at the time it was entered into, both sides must have considered to be of little potential importance, in respect of a horse considered to be of limited promise.

66. Without doubting the evident sincerity of the witnesses called by both sides in this case, I have come to the view that, on the balance of probabilities, the agreement concluded between the parties in January or February 2009 was that contended for by the plaintiffs. However, I also take the view that, after the horse ran at Navan, the plaintiffs acquiesced in, thereby consenting to, the amendment of that agreement, to the extent that the plaintiffs were to be entitled to the appropriate share in the eventual sale price of the horse, rather than being entitled to an ownership interest in the horse *per se*. Accordingly, I have concluded, and I do not understand the plaintiffs to dispute, that, while they are entitled to their respective portions of a 20% share in the net proceeds of sale of the horse, they have no right to, nor any interest in, any portion of the value of the horse's prize money or of its progeny.