Wang Sam Lin v Burridge Steven Harold (trading as Steven Burridge Racing Stables) [2009] SGHC 252

Case Number : Suit 718/2007

Decision Date : 06 November 2009

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : S Gunaseelan (S Gunaseelan & Partners) for the plaintiff; S Karthikeyan (Toh Tan LLP) for the defendant

Parties : Wang Sam Lin — Burridge Steven Harold (trading as Steven Burridge Racing Stables)

Tort

6 November 2009

Judith Prakash J:

Introduction

1 The plaintiff, Dr Wang Sam Lin, is a businessman whose hobby is the owning and racing of racehorses. The defendant, Steven Harold Burridge, is a horse trainer who operates his business under the name "Steven Burridge Racing Stables". In or about October 2005, the plaintiff engaged the defendant to train several race horses including the horse that is the subject matter of this action, an animal named "King and King" (hereinafter sometimes "K&K"). The relationship between the parties ended badly and the plaintiff has sued the defendant on the basis of averments that:

(a) the defendant committed trespass to K&K;

(b) the defendant negligently breached his duty of care to K&K; and

(c) the manner in which the defendant treated K&K was in breach of the defendant's contract in relation to the care and training of the horse.

2 The defendant denies all the plaintiff's allegations. Additionally, he contends that even if he did do what was alleged, the plaintiff has not suffered any loss and damage by reason of his actions and therefore cannot maintain a claim against him. The defendant had mounted a small counterclaim for $1,432.38 being the balance of disbursements incurred by the defendant in respect of the plaintiff's horses but the sum claimed was paid by the plaintiff after the trial ended. Accordingly, I do not have to consider the merits of the counterclaim.

The background

3 The plaintiff first came to know the defendant in or about October 2005. Subsequently, the plaintiff bought five horses, including K&K, and placed these horses with the defendant for training. The parties did not enter into a written training contract. Their agreement was purely oral.

4 The defendant first raced K&K on 30 October 2005 and on this occasion the horse came in first. Thereafter, it ran well until it fell during a race held on 29 October 2006. Prior to that fall, the horse had won six races in 2006. Due to the fall, K&K did not run again until 16 March 2007 when it came in second. It continued to perform well in subsequent races with the following positions: 2/12, 1/10,

2/8, 1/16 and 3/14. Unexpectedly, K&K finished eleventh out of thirteenth horses in a race held on 28 October 2007 and it was this poor showing that precipitated the events that led to this action.

5 Unhappy with the poor result and dissatisfied with the performance of the defendant, the plaintiff decided to transfer K&K from the defendant's stables to those of another trainer, one Desmond Koh. This decision was reached over a lunch held on 29 October 2009, which was attended by the plaintiff, Mr Koh, the horse's jockey for the race on 28 October 2007, and some others. It was taken some time before 1.30pm that day.

6 Mr Koh gave evidence that he had told the plaintiff to reconsider the decision to transfer K&K and that he would wait for further instructions after the plaintiff had discussed it with the defendant. As a matter of etiquette, Mr Koh notified the defendant at about 1.55pm of the plaintiff's intention to transfer the horse. After speaking with Mr Koh, the defendant called the plaintiff to get confirmation of what he had been told and was informed that the plaintiff was on his way to the defendant's office.

7 The plaintiff was not prepared to reconsider his decision so, after lunch, he went straight to the office of the Malayan Racing Association ("MRA") to give formal notice, as required by the Rules of the MRA ("MRA Rules") of the change in the horse's trainer. After filling in the necessary forms to transfer all his horses to Mr Koh, the plaintiff and his assistant, Sadasivan Premkumar ("Mr Kumar"), proceeded to the defendant's office to formally notify him of the transfers. They arrived at the office at about 2pm. The defendant was not there at the time but came in about five minutes later. The plaintiff told the defendant that he wanted to transfer his horses to another trainer and the defendant responded that the plaintiff would have to pay all outstanding fees in cash before the transfer could be effected. The defendant then left the office.

8 The plaintiff told the defendant's secretary, Angela Foong, that he was only transferring two horses, *viz*, K&K and another named "King and Infinite". After she had calculated the outstanding amount for these horses, the plaintiff asked Mr Kumar to cash a cheque for the same. About 20 minutes later, the defendant returned and after finding out that plaintiff intended to transfer two horses only at that time, requested that all four horses in his care be removed. For that purpose, he required full payment of the amounts due for the other horses as well and the plaintiff found that he had insufficient cash to pay the extra amount. He then sent out another representative to get more cash but the bank was closed and the money could not be obtained. In the end it was agreed that the balance could be paid the next day but that the plaintiff's representatives could remove all four horses the same day.

9 At about 5pm that evening, Mr Koh sent his handlers over to the defendant's stables to take over the horses and they were all moved to Mr Koh's premises.

10 The next morning, Mr Koh following his usual procedure upon taking over a horse, sent urine samples of the horses' urine to be tested. It was discovered that K&K had been treated with a steroid. The plaintiff was then told that K&K had been injected with a steroid without his knowledge and that by reason of such injection, the horse would not be able to participate in any race for 40 days. The plaintiff also learnt that morning that the defendant had withdrawn the horse from participation in the Singapore Gold Cup race which was scheduled to be run on 11 November 2007.

11 The plaintiff was very upset and angry and, through Mr Kumar, he subsequently lodged a complaint with the Stipendiary Stewards of the Singapore Turf Club ("the Stewards"). Shortly thereafter, the Stewards convened an inquiry "regarding the circumstances surrounding the stable transfer and treatment of KING AND KING on Monday, 29 October 2007" ("the Inquiry"). I will come to

the determination of the Inquiry shortly but first I should set out the defendant's account (in his affidavit of evidence-in-chief) of his activities and decisions on 29 October 2007.

12 The defendant stated that at about 5am on the morning of 29 October 2007, he went to his office and sent off by fax the entry form entering K&K for the Singapore Gold Cup on 11 November 2007. Then he went to the stables where he noticed that K&K had not eaten the feed that had been given to him the night before and that morning itself. At about 8.30am, the defendant took the horses that had raced the day before, including K&K, to the veterinary department of the Singapore Turf Club (the "clinic") for a routine check up. There, K&K was given a Butasyl and Amino injection which was a normal procedure for horses that had raced recently. After the injection, the defendant trotted K&K at the clinic but it could hardly trot.

13 The defendant then realised that K&K was sore in the leg and he looked "tucked up" and his coat was dull. The defendant went back to the clinic to have the horse checked and medicated further if necessary but since the clinic was full, he was told to return in the afternoon. At that stage, the defendant was of the opinion that K&K needed a few weeks of rest. He considered that K&K would not be able to recover from his sore leg soon enough to race in the near future. After considering the risks and benefits of forcing K&K to race before a full recovery, the defendant decided against it. In his opinion, the Singapore Gold Cup race would be run before there was a chance of a reasonable recovery for K&K and therefore the defendant decided that it was in the best interest of the horse and its owner that he withdrew K&K from that race. Withdrawing the horse meant notifying the handicapper, one Mark Webbey, of the decision. So, at about 10.30 that morning, the defendant spoke to Mr Webbey and asked him to withdraw K&K from the race. Mr Webbey responded that whilst he would note the defendant's request, the defendant should send in the paperwork necessary to formalise the withdrawal. The defendant gave Mr Webbey the necessary papers in the afternoon of 29 October 2007.

14 At about midday, the defendant inspected K&K again and found that its condition had not improved. He decided that it would be best to take the horse back to the clinic soon after 2pm when the clinic opened. At about 1.55pm, he received a phone call from Mr Koh. Mr Koh informed the defendant that the plaintiff had asked him to take the plaintiff's horses over from the defendant. The defendant then called the plaintiff to find out what was going on and was told that the plaintiff was coming to meet him at his office. While waiting for the plaintiff, the defendant decided to carry on with his duties as usual and he therefore prepared K&K to be taken to the clinic.

15 Later in the afternoon, the defendant took K&K to the clinic. He told the vet on duty that K&K had an injury and was lame and asked that a short-acting anabolic steroid injection be administered to help the horse recover. The defendant said that he had read about the good properties of such injections in horseracing magazines and had also been told of this by vets in Australia. He had used anabolic steroid injections when working in Malaysia and he believed that the treatment was beneficial and could be used to promote a horse's recovery during difficult racing and training periods. The defendant asserted that he believed in good faith that an anabolic steroid injection could help K&K in its recovery.

16 The vet examined K&K and agreed with the defendant's suggestion. The defendant had to sign a veterinary request form and thereafter the injection was administered. The vet informed the defendant before administering the injection that the withholding period for the drug was 40 days. By this, the vet meant that the horse would not be able to race for least 40 days and that at the expiry of that period, the horse would have to undergo a blood test to ensure that it was free from the steroid before being allowed to race again. The defendant was not concerned about this period because he had already withdrawn K&K from the Singapore Gold Cup race and he was intending to

rest K&K before racing him again. The Committee Prize race on 2 December 2007 was also too close a race for K&K to recover fully and be able to race. As for the Cathay Pacific Hong Kong Invitation Cup race on 10 December 2007, that was not an issue as the date of the race was just after the withholding period. Thus, provided K&K had recovered and had been invited to race, it would be able to participate. Therefore, the defendant told the vet to proceed with the injection.

17 The defendant stated that the injection was given to the horse at about 2.30pm and he then returned the horse to the stable. He also said that at about 2.15pm he received a phone call from his secretary who told him that the plaintiff had arrived at his office and was waiting for him there. The defendant then made his way back to the office where the plaintiff told him that he wished to transfer all the horses to Mr Koh. The defendant responded that he wanted to be paid in full for all the horses before he would sign the transfer papers. According to the defendant's statement, he was in and out of the office several times that afternoon while the plaintiff was waiting there (from about 2.15pm to well after 4.30pm). It was only much later in the afternoon that it became clear to him that the plaintiff was taking his horses to Mr Koh.

18 The Inquiry took place over three days: 31 October, 5 November and 7 November 2007. Four of the Stewards formed the panel. They took evidence from the defendant, one Dr Matthias Muurlink, the vet who had examined K&K on 29 October 2007, the plaintiff and Mr Koh. After hearing the evidence, on the third day, the chairman informed the defendant that the Stewards believed that he had a charge to answer under Rule of Racing 152(3) of the MRA Rules which reads:

> No person shall act in a manner which in the opinion of the committee or the local committee or the Stewards, is, or may be prejudicial to the integrity or proper conduct or reputation of: a) horse racing in Singapore and/or Malaysia.

The charge itself was formulated under Rule 152(3)(a) and the particulars thereof were as follows:

> You a licensed Trainer, Mr Steven Burridge, did after being informed that the racehorse, KING AND KING was to be transferred from your Stable, arrange for that gelding to be treated with Veterinary Medication on Monday, 29 October 2007. The result of this treatment effectively ruling KING AND KING ineligible to start in any race for a minimum period of forty days. This action was carried out without the knowledge or consent of the Owner and/or the new Trainer and is in the opinion of the Stewards an action prejudicial to the good reputation of horse-racing in Singapore.

19 The defendant pleaded not guilty to the charge. He subsequently read out and submitted a statement in relation to his actions on 29 October 2007 and the panel asked him further questions. Having deliberated on the matter, the panel returned and the chairman informed the defendant that they believed the charge to be substantiated and formally found him guilty of the charge as read. There was then a hearing on penalty. At the end of the hearing and upon further deliberation, the chairman informed the defendant that the nature of the charge was quite a serious one and while the appropriate penalty was one of a fine, the fine was of a significant amount as the matter was serious and the amount must be seen to be a deterrent to others. The panel then imposed a fine of $25,000 on the defendant.

The claim

Trespass

20 As stated in [1] above, the plaintiff's claim proceeds on three bases. The first basis, which he

describes as his "principal claim", is that of trespass.

2 1 *Clerk & Lindsell on Torts* (Sweet & Maxwell, 19th Ed, 2006) ("*Clerk & Lindsell*") at [17-123] defines trespass to goods as follows:

> The action of trespass to goods, *de bonis asportatis*, has always been concerned with the direct, immediate interference with the claimant's possession of a chattel. Though the reference to asportation suggests what is perhaps the most common feature of this form of trespass, that is, the taking away or removal out of the claimant's possession, *the wrong of trespass includes any unpermitted contact with or impact upon another's chattel*. [Emphasis added]

22 The general view taken by English writers is that trespass to chattels is actionable *per se* (ibid.):

> The better position seems to be that direct and deliberate interference is trespass even if no damage ensues.

In the case of *The Kota Bakti* [1993] 1 SLR 849, the Court of Appeal emphasized that trespass to goods is "a wrongful physical interference with them" (at 861).

23 To establish that there was direct interference amounting to trespass, it would suffice that the defendant had used the chattel deliberately or was negligent in causing damage (*Clerk & Lindsell* at [17-124]):

> If he uses a chattel deliberately, erroneously believing that it is his, that is a deliberate and direct act amounting to trespass, though it is accidental, as far as he is concerned, that the legal result is wrong. It is sufficient that he intended to do the act complained of, or was negligent in producing an injury; he need not foresee the legal consequence of his interference.

24 It can be seen from the above definitions that where the trespass consists of wrongful use rather than interference with possession, it is important to establish such wrongful use that the trespasser had no authority from the owner to carry out the action complained of. In this particular case, K&K was initially put into the defendant's care and control by the plaintiff and the plaintiff authorised the defendant to do all such things as were necessary for the proper care and training of the horse. The defendant's evidence was that while he was the trainer of the horse, he made all the decisions regarding its care and medication and the plaintiff did not require him to get prior approval before taking such decisions. The plaintiff himself acknowledged in the course of the trial that it was never the practice for the defendant to discuss with him or inform him of the treatment the defendant was giving to the plaintiff's horses prior to such treatment being administered. Thus, the defendant obviously had the plaintiff's authority to take all such steps as he deemed fit for K&K's well being.

25 In establishing trespass on 29 October 2007 therefore, it must first be established whether at the time that the steroid injection was administered to K&K, the defendant still had authority from the plaintiff in relation to the care of the horse. The plaintiff's position was that the defendant's appointment as trainer of K&K had been terminated by the time the injection was administered. He submitted that the contract was terminated at about 2.15pm on 29 October 2007 and that thereafter, the defendant had taken the horse to the vet and the steroid was given while the plaintiff was waiting in the defendant's office for his cheque to be cashed so that the defendant's bills could

be paid off. The defendant's case was that the horse was treated by a qualified vet of the Singapore Turf Club while the defendant was still the plaintiff's trainer in possession of K&K with a duty to care for it until it was transferred to the new trainer.

26 The defendant in his submissions relied on his explanation that he had already made arrangements in the morning to take K&K to the vet for treatment in the afternoon. It was only after this that he had heard about the plaintiff's intention to transfer the horses from the new trainer, Mr Koh. Mr Koh had requested the defendant to sort out any differences he had with the plaintiff and had expressed the hope that the defendant and the plaintiff would resolve any misunderstanding that they had "and continue their partnership". The plaintiff had turned up at the defendant's office at 2.15pm and the two were talking about the plaintiff's concerns. In the midst of discussions, the defendant's assistant had turned up with K&K and the defendant then left with the assistant to keep the pre-arranged appointment at the veterinary clinic. The defendant relied on evidence given by Mr Koh that the plaintiff had only made the final decision to transfer the horses later in the afternoon. This, the defendant submitted, must have been after 4.30pm. Thus, prior to the final decision being made, the plaintiff's horses were still under the custody, care and control of the defendant and he had a duty to care for a sick horse expeditiously rather than to abandon his obligations at the first indication that the plaintiff may appoint another trainer and transfer the horses.

27 A comparison between the defendant's accounts of the timing of the injection as contained in his affidavit and as contained in his evidence in court and the subsequent submissions shows that the defendant had changed his stand. Although the defendant did not expressly state so in his affidavit, the strong impression that he gave there was that he had taken the horse to the vet prior to the plaintiff's arrival at his office and that at the time of the injection he thought there was still a possibility of changing the plaintiff's mind about moving the horses since Mr Koh was not keen on taking over the animals. On the other hand, his closing submissions showed his recognition of his admission in court that he had spoken with the plaintiff in his office before he took K&K to the vet in the afternoon. His testimony in court was that the plaintiff had arrived at the office at about 2.15pm with seven other people and when he asked the plaintiff what the matter was, the plaintiff's reply was that he had to change trainers and that he had lost face the previous day. The defendant had then told the plaintiff that K&K had been with the defendant for two and half years and had had a great amount of success. Whilst he was trying to persuade the plaintiff not to change trainers, his boys who were handling the horses came to the door and told him that he was late for the vet and he then left the office and took the horse to the vet. At the clinic he had the SA injection administered because he was doing his best to look after K&K and he considered the horse was still his responsibility.

28 The shifts in the defendant's evidence are telling. From an insinuation that the horse was treated before he saw the plaintiff, the evidence changed to a position where he had treated the horse after seeing the plaintiff but when he was still not certain that the horse would be taken away. On a consideration of the evidence, it is probable that by the time the horse was given the injection, the defendant's contract with the plaintiff had been terminated and the transfer of the horses (including K&K) was simply, to the defendant's knowledge, a matter of time in that the transfer would take place as soon as payment of the bills had been made. It is definite that the defendant was aware at the time of the injection that the plaintiff wanted to terminate his services. First, he had been notified of this intention by Mr Koh and second, even before meeting the plaintiff in his office, he knew that the plaintiff was on his way to the office and must have inferred that the purpose of the visit was to terminate the contract even if the plaintiff had been reluctant to say as much during the telephone conversation. The defendant was aware of the plaintiff's unhappiness with K&K's performance and the consequence of that unhappiness had been conveyed to him by Mr Koh. So at the time the defendant was at the clinic in the afternoon, he knew what was in store.

29 I think, however, that in fact the plaintiff had already met the defendant in the latter's office before the horse was taken to the vet in the afternoon. I also consider that at that stage, the defendant knew that the plaintiff was not going to change his mind. Mr Koh may have expressed some reluctance to take the horses over from the defendant but no such reluctance to terminate the defendant's engagement was shown by the plaintiff during the meeting. This was clear from the account of what had happened given by the defendant's secretary, Ms Foong. She said when the defendant met the plaintiff in the office at about 2.15pm, the plaintiff told the defendant that he wanted to transfer his horses to another trainer and when the defendant asked why, the plaintiff explained that it was like man and wife who would have to separate if they could not get along. The defendant then asked the plaintiff the settle his outstanding account in cash and the plaintiff agreed. After this, the defendant left the office and went towards the stables. Whilst the defendant tried to imply that the discussion on the cash payment took place later in the afternoon, Ms Foong's evidence confirmed that the payment discussion took place during the parties' first meeting in the office. Given that it was after that first meeting that the defendant took the horse for the SA injection, the defendant must have known then that the plaintiff was not changing his mind and the contract had ended. I therefore do not accept the defendant's evidence that at the time of the injection he still thought that he could sort out the matter with the plaintiff and prepare the horse for its next race.

30 In my judgment therefore, by the time the injection was administered, the defendant knew that he no longer had the plaintiff's authority to handle K&K. All that the plaintiff wanted was to take the horse away and the previous understanding in which the plaintiff trusted the defendant to look after the horse and take all necessary steps for its care no longer existed. Even if the defendant had only known of the plaintiff's intentions from his conversation with Mr Koh and the plaintiff's statement that he was going to meet the defendant in the office, the defendant would still not have been justified in administering the SA injection to the horse without the plaintiff's express consent. This was recognised by the Inquiry which found the defendant guilty of undertaking an action prejudicial to the good reputation of horseracing in Singapore when he, knowing of the intended transfer of the horse, had the injection administered. In my judgment, the administration of the injection was a wrongful physical interference with K&K and as such administration was ordered or caused by the defendant's instructions, the defendant committed trespass on K&K.

31 In this respect, I should state that although the injection was administered by a vet in the clinic, it was clear from the evidence that the practice of the vets at the Singapore Turf Club (the "Turf Club") was to administer such injections at the trainer's request. The plaintiff's expert witness, Dr Russell Glenn Robertson-Smith, a vet from Australia, explained the uses of anabolic steroids as follows:

> It's a – a drug which certainly helps them to eat, it improves their appetite. It also, er, causes, them --- the anabolic part of the drug causes them to lay their muscle, so if we have a horse with a soft tissue injury such as a tearing of the muscle, or a long-term lameness where the horse has lost musculature, we might advise that an anabolic steroid would be an appropriate treatment in those circumstances to ensure the horse eats well, and that there is some recovery to the soft tissue.

Dr Robertson-Smith being from Australia was not familiar with the practice followed in Singapore but evidence of this was given by a vet at the Turf Club, Dr Curry Keoughan, who also looked after K&K when it was taken over by Mr Koh. Dr Keoughan testified:

> If a trainer requests a drug, we always examine the horse to an extent to determine whether it would be safe to administer that drug. It's not always the same as saying I agree that I would use SA. I would probably never choose to recommend SA to any horse but that doesn't mean it's not an acceptable viable treatment and the trainer does have quite a valuable input on the treatment of the horses. So I believe I might be deemed confusing again but Dr TS(?) would have examined the horse and felt it safe to give the drug. But that doesn't mean he would have necessarily come up with his own idea to treat the horse with the drug.

The above evidence was consistent with that given by Dr Koos van den Berg, the head veterinarian at the Turf Club at the material time. Dr van den Berg stated that in 2007, anabolic steroids were favoured by trainers to promote the appetite of a horse and very often a trainer would request that this medication be administered. Dr van den Berg explained that if a horse had a poor appetite this was a condition that was difficult for a vet to verify from examination so what happened was that the anabolic steroid would be administered on the trainer's request. If a trainer asked for the injection, the vet would make sure that the trainer was aware of the withdrawal time and thereafter would administer the drug but the vet would not need to examine the horse before doing so. The defendant himself straightforwardly testified that he had requested that the steroid injection be administered. He considered the request justified on the basis that he was doing the best he could to ensure the welfare of the horse.

32 The defendant maintained throughout that what he did was done in the best interests of the plaintiff and the horse and that there was nothing malicious or wrongful in his decision to treat K&K with an anabolic steroid. These arguments even if accepted in full do not afford the defendant a defence to the claim of trespass. As pointed out above, an action in trespass to goods requires unpermitted contact or wrongful interference. There is nothing inconsistent between having a duty to care for the horse and having a duty not to wrongfully interfere with the plaintiff's possession of the horse. The scopes of those duties are distinct: any act that falls within the duty of care does not fall within the scope of wrongful interference. However, that is not to say that the boundaries of those duties do not shift according to the circumstances. Once the defendant was told that his services were terminated and that K&K was to be transferred pending payment in cash (which was being arranged for immediately), the defendant was under a duty not to do anything to the horse that would deprive the plaintiff of the benefit of the horse, subject to, perhaps, a duty to treat the horse due to reasons of urgency or pressing need but even then, given that the plaintiff was in the defendant's office and could be consulted immediately on any decision to be taken in respect of the horse, the scope of the defendant's discretion in relation to K&K was extremely small.

33 Second, his best intentions and lack of malice are not a defence to an action in trespass. That is clear from the passage from *Clerk and Lindsell* cited at [23] above and also in the passage at [25-11] of *Bullen & Leake & Jacob's Precedents of Pleadings* (Vol 1, London Sweet & Maxwell) which states that "deliberate conduct (in the erroneous belief held by the defendant that he was acting lawfully) does not amount to a defence if the act otherwise amounts to trespass". Finally, although the SA injection caused no physical injury to the horse, it did result in a withholding period of over 40 days, a period during which the horse could not have been entered for any race.

34 Having already been told that his services were terminated, the defendant proceeded to have K&K injected with the anabolic steroid which on all the evidence was an optional treatment and not occasioned by any urgency or emergency. At that time, it would have still been open to the defendant to have asked for the consent of the plaintiff or Mr Koh before doing so. The defendant

failed to give any explanation whatsoever as to why he did not attempt to take either course before administering the SA injection despite knowing full well what the consequence of the treatment was. The defendant also could not show that there was an urgent need to administer the SA injection. Despite the defendant's pleas of innocence, it has been established that there was unpermitted contact and wrongful interference with the horse.

Negligence and breach of contract

35 The plaintiff submitted that if the court found that the defendant's act of causing K&K to be given the injection constituted trespass to the horse, then it should follow that the defendant was also liable for breach of his service contract; in the alternative, if the court was of the view that the trespass occurred after the service contract had been terminated, then the plaintiff said that the defendant, by failing to keep the horse from being interfered with, was negligent.

36 As far as breach of contract is concerned, I have accepted the plaintiff's submission that the contract had been terminated by the time that the injection was administered. Accordingly, the plaintiff does not have an action for breach of contract. However, I will consider the issue briefly on the basis that the contract was ongoing at the time the injection was given.

37 In relation to the contractual claim, the plaintiff had pleaded that it was orally agreed between him and the defendant that the defendant would train K&K and the plaintiff would pay the monthly training fees, veterinary fees and entry fees and other expenses incurred for the horse. It was also pleaded that this contract contained implied terms that the defendant had a duty to maintain the health and fitness of the horse so that it would be fit and in the best condition to run in races, not to do anything that would cause personal injury and/or affect its health and to conform to the MRA Rules to which all trainers had to adhere to and the direction by circulars sent by the Turf Club to trainers.

38 The dearth of submissions on the contractual claim is some indication of the level of the plaintiff's confidence in this basis of claim. As regards the assertion that the defendant owed the plaintiff a duty to maintain the health and fitness of the horse, such a duty would be consistent with the defendant's duties as a trainer. It is, however, unlikely that such a duty is an unqualified one amounting to a warranty that K&K would always be healthy and fit or in the best condition to run races at all times. There was no evidence produced that that was the parties' intention either. There was no express term the horse should not be given a substance that would result in it not being able to race for 40 days and I do not see the basis for implying such a term since the purpose of the contract was not that the horse should race in every race regardless of its physical condition but that the horse should be looked after so that it could be in fit condition to race.

39 Additionally, the plaintiff has not adduced any evidence to show that the defendant had failed to maintain and care for the health and fitness of K&K. As noted above, Dr van den Berg had testified that the anabolic steroid treatment was used to stimulate the appetite of horses and was often given upon a trainer's request. The plaintiff therefore cannot show that the defendant failed to maintain or care for the health of K&K by administering the injection. None of the three vets who testified said that the defendant's treatment was inappropriate for treating the horse and Dr Keoughan also agreed that the SA injection was not harmful to the horse. Therefore, any allegation that the defendant breached his contractual duty to maintain or care for the health of K&K must fail.

40 As for the alleged implied term that the defendant would conform to the MRA Rules and to the directions by circular sent by the Turf Club to trainers, the plaintiff did not put in any submissions on why such terms should be implied into the contract between him and the defendant. There was no

evidence either that terms of this nature were commonly found in contracts between horse owners and horse trainers or were recognised by the industry as being customary in the trade.

41 Further, a term that the defendant will conform to the MRA Rules cannot pass the "business efficacy" test which is a common test used to determine whether a particular term is implied into a contract or not. The MRA Rules are the rules that govern and regulate the sport of horseracing at four turf clubs in Malaysia and Singapore. The MRA Rules provide a regulatory framework for those turf clubs to ensure proper horseracing standards and enforce disciplinary measures. Accordingly, a large part of the MRA Rules governs conduct and persons that are beyond the owner-trainer relationship.

42 The relationship between the plaintiff and the defendant was one where the defendant, as trainer, took possession and care of the horse. The plaintiff paid the defendant his salary and disbursements. There is no necessity to imply that the defendant had to conform to the MRA Rules for the arrangement between the plaintiff and the defendant to work.

43 The contractual claim must, therefore, fail.

44 As for negligence, I do not see any cause of action here either. The pleading of negligence in the statement of claim reads as follows:

> 31. Further or in the alternative, the Plaintiff … says the Defendant had a common law duty of care to the Plaintiff in training the said horse King and King and not doing anything that may cause injury to the horse or to the health of the horse and to conform to the MRA Rules of Racing for which he was paid training fees monthly and had negligently breached the said duty.

It can be seen that the pleading in negligence was a rehash of the pleading relating to breach of contract.

45 The defendant was not careless in relation to the care of the horse. The action complained of was one that was taken deliberately and was, on the medical evidence, an action that could benefit the horse in that it could stimulate K&K's appetite and could also improve its muscle condition. The adverse effect would be on the horse's ability to race during a specified period rather than an adverse effect on the horse itself. The duty imposed on the defendant was to care for the horse. The plaintiff did not plead that the defendant had a common law duty to ensure that K&K could always qualify to race in the sense that it would meet the racing regulations in relation to the presence of proscribed substances in its blood. In my view, the plaintiff's complaint relates to the consequence to him that the treatment had rather than to the consequence it had on the horse. There was no evidence that the SA injection harmed K&K physically in any way and as I have noted, Dr Keoughan's evidence was to the contrary. I do not think the duty of care that the plaintiff relies on can be stretched to be a duty to care for the plaintiff's economic interests in the sense of having a duty to never dose the horse with something that would prevent the horse from racing and possibly winning a prize for the plaintiff. In any case, though I may be repeating myself, such a duty was not pleaded and really is beyond the scope of this judgment.

Damages

46 Although trespass is actionable *per se*, the plaintiff will only be entitled to nominal damages unless he can show how the trespass caused him to sustain substantial damages. In the statement of claim, the plaintiff pleaded that he had suffered the following loss and damage:

PARTICULARS OF LOSS AND DAMAGE

(1) The horse could not be entered for the Singapore Gold Cup worth $1.35 million and deprived the Plaintiff of a chance to win the prize money.

(2) The horse could not be entered for the Committee Prize Cup worth $200,000.00 and deprived the Plaintiff of the chance to win the prize money.

(3) The horse could not be entered for the Cathay Pacific Hong Kong Invitation Cup worth HK$15 million and deprived the Plaintiff of the chance to win the prize money.

(4) The horse could not be entered for any other race for at least 40 days and had to clear a blood test before it was allowed to race and deprived the Plaintiff of the chance to win any prize money.

It can be seen from these particulars that the plaintiff was characterising his damages as arising from the loss of a chance for K&K to win prize money in horse races during the 40 days following the injection.

47 The seminal case on loss of a chance as a head of damages is *Chaplin v Hicks* [1911] 2 KB 786 ("*Chaplin v Hicks*"). This case has been applied locally in *Asia Hotel Investments Ltd v Starwood Asia Pacific Management Pte Ltd* [2005] 1 SLR 661 where Chao Hick Tin JA, delivering the judgment of the majority, summarised the principles established by *Chaplin v Hicks* as follows:

> 139 … At the end of the day, in a case like the present, two questions should be asked and answered. First, did the breach on the part of the defendant cause the plaintiff to lose a chance to acquire an asset or benefit? Second, was the chance lost a real or substantial one; or putting it another way, was it speculative? While, as a rule, the plaintiff always has the burden of proof, the question as to who has to prove a particular fact, and whether in a particular fact situation the evidential burden shifts, are matters dependent wholly on the circumstances. …

48 Following the above pronouncement on the law, the first thing that I have to consider in relation to the damages aspect is, whether the trespass committed on K&K by the defendant caused the plaintiff to lose the chance of winning prize money in the ensuing 40 days being the withdrawal period during which the horse could not race. In this case, the answer to the question would, at least superficially, appear to be "yes". This is because the plain result of the administration of the injection was that the horse was not qualified to enter any races during that period and if the horse could not race, it could not win any prizes. The plaintiff was therefore deprived of the possibility that the horse would win one or more races.

49 The defendant submitted, however, that notwithstanding the inevitable disqualification caused by the injection, the plaintiff did not lose any chance to gain any prize money because during the period the horse was not fit to run and would not have run even if the injection had not bee administered. He submitted that his action was not the effective cause of the loss of the plaintiff's chance and cited *JSI Shipping (S) Pte Ltd v Teofoongwonglcong (a firm)* [2007] 4 SLR 460 where the Court of Appeal commenting on the "but for" test of causation usually applied observed at [141]:

> 141 By way of introduction, we must clarify that the "but for" test is a necessary but sometimes insufficient litmus test. It is but an exclusionary test serving to filter out non-causal occasions for the loss (John G Fleming, *The Law of Torts* (The Law Book Company Limited, 9th Ed, 1998) at p 220; Harvey McGregor, *McGregor on Damages* (Sweet & Maxwell, 17th Ed, 2003) at para 6-008). Therefore, the respondent's failure to verify Riggs' remuneration may survive this test, but may still not qualify as an "*effective cause*" or "*proximate cause*", a concept used to determine whether it is fair to hold the negligence responsible for the loss where other factors have contributed to or intervened in the chain of causation (AM Dugdale & KM Stanton, *Professional Negligence* (Butterworths, 3rd Ed, 1998) at para 18.01; *Chitty on Contracts* vol 1 (Sweet & Maxwell, 29th Ed, 2004) at para 26-029). The elusiveness of such a concept was incisively alluded to by Andrews J in *Helen Palsgraf v The Long Island Railroad Company* (1928) 248 NY 339 at 352, where he opined that "proximate" means that "because of convenience, of public policy, of a rough sense of justice, the law arbitrarily declines to trace a series of events beyond a certain point. This is not logic. It is practical politics".

The defendant submitted that it was K&K's lame and unfit condition that prevented it from racing from 29 October 2007 onwards and not the treatment administered by the defendant.

50 I do not think that in this case it is helpful to the defendant for me to consider whether the administration of the injection was the "effective cause" or "proximate cause" of the loss because obviously the withdrawal period meant that the horse could not race at all for 40 days and this in turn means that the injection was effective to prevent the horse from racing. The injection must, therefore, have been an effective cause of the inability of the horse to win any prize money. On the other hand, if the horse would have not been able to run in any race even if the injection had not been given, then the chance that the plaintiff lost was not a real chance but a speculative one and he would not be entitled to recover any damages. Accordingly, I think that the proper way of assessing the plaintiff's loss here is to determine the answer to the second question posed in the assessment of damages for loss of a chance *ie* whether the chance lost was a real chance or a speculative one.

51 I now turn to the evidence. First, Mr Koh's evidence: when he received K&K at about 5pm on 29 October 2007, he took note of its condition and decided that the horse needed a break from racing. He found K&K to be sore in the back and to have slight inflammation in both front leg joints and stiffness in both the hind hocks. Mr Koh testified that K&K would not have been permitted by the race officials to run in any races in the condition in which it was on 29 October 2007. He also said that he told the plaintiff that the horse was not fit to run. The next day, Mr Koh took K&K to the clinic to be examined by Dr Keoughan.

52 Second, the evidence was that K&K's condition did not improve for quite a long period of time and it was only in January 2008 that Mr Koh started to give the horse fast work. He told the court that the horse was rested for at least two months before training resumed and during the two month resting period, K&K was checked frequently by Dr Keoughan. The records of the clinic showed that on 9 November 2007, the horse was x-rayed because of soreness in its front knees, its fetlocks, its feet, its stifles and its hocks. On that day, Mr Koh was advised not to race the horse for a further seven days at least. The horse then visited the vet again on 30 November 2007 and on this occasion Dr Keoughan injected K&K with butasyl because the horse was sore.

53 During cross-examination Mr Koh was asked about the 40 day of withdrawal period. It was pointed out that there were two races within this period (the Singapore Gold Cup and the Committee

Prize) and one race, the Cathay Pacific Hong Kong Invitation Cup, outside this period. He was asked whether he agreed that K&K had been unfit to run any of those races. Mr Koh replied in the affirmative and explained that the horse was unfit because he was sore and he needed treatment. The first time K&K was presented to race after going to Mr Koh's stables was on 20 April 2008, some five months later.

54 Dr Keoughan gave evidence of his treatment of the horse with reference to the clinic notes. He confirmed that on his first inspection on 30 October 2007, the horse was passively lame in three legs and actively lame in four legs. Although fit, the horse was lame enough that it needed to be rested and Dr Keoughan would not have recommended racing it on that day. He informed the court that before each race, a horse must pass a pre-racing lameness examination and if it cannot do so, it is not allowed to race. The vets in the Turf Club have an accepted guideline for determining lameness, the American Association of Equine Practitioners' Guide to Lameness, and Dr Keoughan was confident that his assessment of K&K's lameness would have been endorsed by any competent horse vet following the Guide.

55 After 30 October 2007, Dr Keoughan saw K&K every two to four days in the course of his regular visits to Mr Koh's stables. He continued to check the horse's condition and it was only on 14 January 2008 that he finally thought the horse was in a condition to begin fast work again. He also considered that during the period between 1 November 2007 and 14 January 2008, K&K would not have passed a pre-race soundness examination.

56 The evidence therefore establishes that even if K&K had not received the steroid injection on 29 October 2007, it would not have been fit to take part in the three races specified by the plaintiff or, for that matter, in any other race which was held during the 40-day withdrawal period. Even if it had been able to start, in its lame condition, it would not have been able to win any prizes. It must be remembered that even before the horse was transferred to Mr Koh, it was not in good condition and had placed eleventh out of thirteen horses in the race run on 28 October 2007. On the morning of 29 October, the defendant had been concerned enough about K&K's condition and fitness to race that he had, even before having any inkling of the plaintiff's intention to terminate his services, taken steps to withdraw K&K's entry from the Singapore Gold Cup. After the transfer, K&K's condition appears to have worsened rather than improved (it was not noted to be lame on 29 October) and the horse required more than 40 days rest before it was able to go back to fast work in its training programme.

57 Having regard to all the circumstances therefore, I must hold that the chance of winning prize money that the plaintiff lost by reason of the administration of the injection was, due to the condition of the horse, a speculative rather than real chance. The plaintiff did not suffer any real loss by reason of the defendant's action. I should add that if one used the "but for" test of causation, the result would be the same. To the question: "But for the administration of the injection, would K&K have participated in races during the 40-day period starting on 30 October 2007", the obvious answer on the evidence would be that it would not have as it was not fit enough to race during that period. Thus, the defendant's action did not cause the plaintiff to lose any prize money.

58 The evidence also made it plain that in any event, K&K would not have been able to run in either the Singapore Gold Cup or the Cathay Pacific Hong Kong Invitation Cup races. As regards the first, the closing date for entries was 29 October 2007 and therefore once the defendant had withdrawn K&K from this race, there was no possibility of it being re-entered by Mr Koh. In this respect, I accept the defendant's evidence that the withdrawal was done in the morning even though the papers were filed in the afternoon. The decision to withdraw the horse was made purely on the basis of its condition and fitness to race. The defendant's evidence on the time of withdrawal was

supported by that of Mr Webbey. As for the Cathay Pacific Hong Kong Invitation Cup, both Mr Koh and the defendant testified that in order to participate in this race, the horse would have to receive an invitation from the organisers. The defendant sent in a nomination to the organisers asking for K&K to be invited but the evidence was that no invitation was issued thereafter either to the defendant while he was still K&K's trainer or to Mr Koh after the horse was transferred. In the absence of an invitation, K&K would not have been able to enter that race.

59 In his reply submission, the plaintiff submitted that he was entitled to damages for breach of contract even if he could not show that the steroid injection caused the horse to be unable to race. The plaintiff asserted that the defendant breached his duty to him by failing to advise him of any need to rest the horse earlier. I have no hesitation in rejecting this submission as being out of bounds. It was not based on any pleaded case and not put to the defendant while he was on the stand.

Conclusion

60 I have found that the defendant committed trespass on K&K. Accordingly, there must be judgment for the plaintiff. As the plaintiff has failed to prove that he suffered any real loss by reason of the trespass, I award him nominal damages of $100. The plaintiff should not have brought this action since no real damage was sustained. Therefore the plaintiff must pay the defendant's costs of defending the action and the costs of the counterclaim to which he had no real defence.