

27 Mar 08

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LEGAL UPDATE

A DREW & NAPIER PUBLICATION

CASE UPDATE

FOR THE FIRST TIME, AN ENGLISH COURT IMPOSES A DUTY ON A BOOKMAKER TO PROTECT A GAMBLER FROM THE RISK OF LOSS

Graham Calvert v William Hill Credit Limited [2008] EWHC 454 (Ch)

Executive Summary

The English High Court has ruled that a bookmaker who undertook, at a customer's request, to prohibit the customer from gambling for a specified period owed the customer a duty of care in enforcing that prohibition so as to protect him from the risk of gambling losses during that period.

This is the first English decision that examines the circumstances in which a bookmaker may be liable in negligence for a problem gambler's gambling losses. It is also the first time that an English court has departed from the general principle that the law does not impose a duty on a person to prevent his "neighbour's" self-inflicted harm in the context of gambling.

Background

The defendant, William Hill Credit Limited, is a provider of internet and telephone gambling services in England. The defendant had implemented a Social Responsibility Policy which contained procedures designed to combat problem gambling. These included procedures for "self-exclusion", in that the defendant would refuse service to or otherwise prevent individuals who have entered into a self-exclusion agreement from participating in its gambling services. The self-exclusion agreement expressly disclaimed liability for claims in the event that the defendant failed to comply with the exclusion.

The plaintiff, Mr Graham Calvert, is a self-professed "problem gambler". On 5 June 2006, he telephoned the defendant to seek exclusion from telephone betting. The call ended with the defendant's verbal assurance that the plaintiff would not, for the next 6 months, be allowed to "*open [his] account under any circumstances*" or be "*allowed to bet over the telephone with [the defendant]*".

Unfortunately, the plaintiff's self-exclusion request was not processed. His telephone betting account was not closed. Neither was he asked to sign a self-exclusion agreement.

The plaintiff continued engaging in telephone bets with the defendant after 5 June 2006. He also expanded his betting activity after opening a cash betting account with the defendant and an internet account with another company offering a matched bets service. By mid-December 2006, he was broke.

The plaintiff then brought an action against the defendant, alleging that the defendant's negligence had caused him financial and psychiatric harm.

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The Duty of Care

No general duty to prevent self-inflicted harm

The starting point in the context such as the present (eg. where the prime cause of the plaintiff's loss was his own decision to continue his gambling) is that the law imposes no general duty upon a person to prevent his "neighbour" from harming himself. However, unique circumstances may give rise to a duty to prevent or mitigate the consequences or aggravation of self-inflicted harm, eg. the assumption of control over a vulnerable person, or the assumption of responsibility for the care of, or the provision of assistance to, such a person.

The plaintiff's case: 2 formulations of the duty of care

The plaintiff suggested that the duty of care existed in two ways; one broad and the other considerably narrower.

The broader submission was premised on the recognition of a duty owed by a bookmaker to *any* customer who appeared to be a problem gambler, first, to take reasonable steps to offer assistance (including a self-exclusion arrangement) and secondly, to avoid unwittingly exploiting the customer's vulnerability by permitting that customer to continue gambling.

The narrower approach focused on the creation of a special relationship between the plaintiff and the defendant (and not problem gamblers as a class) when the plaintiff made his self-exclusion request and received assurance that he would not, over the next 6 months, be allowed to open the account or be allowed to bet over the telephone with the defendant.

Broader formulation of duty of care rejected

The court rejected the plaintiff's broader submission, chiefly for the following reasons:

- **No voluntary assumption of responsibility:** The defendant could not be said to have voluntarily assumed responsibility to all its problem gambler customers by the mere implementation of its Social Responsibility Policy and its self-exclusion procedures. To begin with, problem gamblers as a class did not uniformly suffer from such severe impairment in their ability to control their own gambling that it would be right for the law to treat them, without more, as being so vulnerable as to require special treatment, even in the absence of a request for it. Next, it was unrealistic to expect a bookmaker to be able, in its routine operations, to identify pathological gamblers by way of "*what amounts to a process of medical diagnosis*". Finally, the defendant's self-exclusion procedures were designed in such a way that any self-excluded gambler would, in the ordinary course, be required to acknowledge by his signature an express disclaimer of legal liability for the consequences of any gambling during the period of exclusion.
- **Insufficient proximity:** The judge took the view that it is difficult to justify requiring a bookmaker to prohibit a gambler from exercising his liberty to gamble, particularly where his problem gambling is on the milder end of the spectrum disorder. To do so would be an "*invasion of his autonomy, in relation to an activity for which he is primarily responsible for the consequences*".

- **Unfairness:** It is unfair to impose a duty of care on a bookmaker in circumstances where a problem gambler could freely take home his profits but yet expect the bookmaker to cover his losses -- without even having first sought the bookmaker's assistance to help him control his addiction.
- **No basis to depart from the general principle:** No established exception to the general principle that a person is not responsible for preventing his "neighbour's" self-harm points towards recognising a duty of care to problem gamblers. A bookmaker such as the defendant is not in a position to assert a sufficient amount of control over a customer's betting activity.

It is interesting to note, however, that the court left open the possibility that the broader duty of care may arise in relation to a customer whose behaviour is *actually known* to the bookmaker to have become so extreme as to demonstrate that his gambling is wholly outside his control.

Narrower duty of care imposed

The court accepted the plaintiff's narrower formulation of the duty of care, which was predicated upon the plaintiff having presented himself to the defendant as a problem gambler in need of help and having received the defendant's assurance of help (without any disclaimer of legal responsibility). The judge's reasons were briefly as follows:

- **Voluntary assumption of responsibility:** The plaintiff's request for help and the defendant's undertaking to give it gave rise to a sufficient voluntary assumption of responsibility by the defendant to exclude the plaintiff from telephone gambling for 6 months. The parties were brought into a degree of relationship similar to that of contract, absent only the element of consideration. The provision of assistance would not have infringed the plaintiff's autonomy since he had himself specifically requested it.
- **Sufficient foreseeability:** It was clearly foreseeable that both financial and psychiatric harm could result from the defendant's failure to implement the self-exclusion process.
- **No indeterminate liability to an indeterminate class:** No question of an indeterminate class of plaintiffs arose here. The defendant's liability from its failure to implement the self-exclusion process would also have been limited in financial terms to losses over 6 months from the plaintiff's telephone gambling. As for psychiatric harm, the damages for an aggravated gambling disorder were likely to be "*modest*".
- **Fairness:** It is not unfair that a bookmaker who has undertaken (albeit without consideration) to exclude a problem gambler customer at his request without making any disclaimer of liability, should incur a duty to take reasonable care to do so. The bookmaker has the concomitant right to prohibit the customer from making any profit.
- **Special considerations warrant departure from general principle:** Here, the plaintiff's vulnerability gives rise to a degree of dependence. He seeks to rely on his bookmaker's assistance in maintaining his diminished control over his gambling which, without that assistance, he fears will fail him. As such, the defendant's assumption of responsibility in this context can properly be extrapolated from the established line of cases where persons whose vulnerability impairs their decision-making are treated as deserving of special protection.

Accordingly, the court held that the defendant owed the plaintiff a duty to take reasonable care in implementing the 6-month exclusion from telephone gambling requested by, and assured to, the plaintiff. This duty of care was breached.

The defendant was, however, ultimately spared from liability because the plaintiff's case failed on causation grounds. The court did not accept the plaintiff's evidence that he had either excluded himself or been excluded by other major bookmakers such that the other limited gambling options out there were of little attraction to him. Even if he had been deprived of the opportunity to bet over the telephone with the defendant, he would have eventually ruined himself financially (albeit at a slower rate) because of the reduced scale of gambling still available to him. As such, the court felt that it would be difficult to justify how the plaintiff's "*continuation on the road to ruin by gambling on the telephone can be laid at [the defendant's] door*".

Comment

Singapore's Casino Control Act 2006 (which is yet to substantially come into force) contemplates three types of exclusion procedures to prohibit persons from entering or remaining on casino premises: (i) voluntary exclusion, by which a person applies to exclude himself; (ii) family exclusion orders, by which family members may apply for a person to be excluded; and (iii) third party exclusion orders, by which third parties such as the Casino Regulatory Authority, the Commissioner of Police and the National Council on Problem Gambling may issue an exclusion order against a person. Casino operators will have statutory and regulatory obligations to give effect to all exclusion orders.

Developments in English law on the civil liability and evolving responsibilities of gaming operators in the context of exclusion orders – such as in the present case – bear close scrutiny as Singapore continues to finetune its legal and regulatory framework to strengthen social safeguards against the backdrop of the liberalising betting and gaming industry.

If you would like more information about this case or wish to discuss how it may potentially affect you or your business, please feel free to contact any of the following lawyers:

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