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IN THE SUPREME COURT OF NEW ZEALAND  
HAMILTON DISTRICT  
HAMILTON REGISTRY

No. A.228/72

1x

No

BETWEEN ANASTASIOS ECONOMOU

Plaintiff

A N D ROBERT FINLAY MacDONALD  
and PERCY GEORGE VERCOE

Defendants

IN CHAMBERS:

Hearing: 12th September, 1972.

Counsel: Fisher for Plaintiff in support.  
Campion for Defendant to oppose.

Judgment: 21 September, 1972.

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JUDGMENT OF HENRY, J.

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This is a motion by Plaintiff under Rule 478 of the Code of Civil Procedure for an order for preservation and inspection of certain records. Plaintiff represents a syndicate which contributed to a sweepstake organised by Defendants. This is according to the Statement of Claim which also alleges that a fund of \$831,564.70 is held by Defendants presumably in trust for the winner or winners of the said sweepstake. Plaintiff alleges that the syndicate he represents hold the sole winning ticket and is thus entitled to the said fund. It is pleaded that the sweepstake was conducted according to certain rules which were expressly pleaded but not set out in the pleadings. The crux of the dispute is the fact that a horse which was first past the winning post and so placed by the judge was the subject matter of a protest which resulted in a change of the first placing so that one of the choices of the said syndicate was relegated to a lesser placing and a choice not made by the said syndicate was placed first. The entry of Plaintiff then contained only five "winners" whereas if the placings had not been so reversed it would have contained six

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"winners". In the former event the sweepstake is shared by others whilst in the latter event the syndicate is the sole winner. It was conceded by Counsel for Plaintiff that "race day placings" are final. So the real question is what is meant by that term.

Rule 478 refers to any property which is the subject matter of the action or in respect of which any material question may arise in the action. The subject matter is the fund. No question arises about the fund as such. But it is argued that property in question is property in respect of which a material question may arise in the action. According to the affidavit filed in support of the motion the property comprises documents concerning the proceedings of the judicial committee of inquiry on the running of the race in which the placings were reversed. This apparently was an inquiry held on the day of and immediately after the race was run and before the judge's placings were reversed. The documents are said to be "verbatim shorthand notes, other notes and a tape recording".

As I see Plaintiff's case it is that the "race day placings" are the horses called in first by the judge irrespective of the rules of racing. That is a simple question of fact if that be the true construction of the Rules pleaded. On the other hand if, by the Rules of racing, "race day placings" means the horse officially declared the winner, then that again is a simple question of fact in the final result. I am unable to appreciate how the proceedings of the judicial committee are in issue in this case. The result of these proceedings, namely, the declaration of the winning horse, is an issue.

In my judgment the documents in question do not appertain to any material question which may arise in the action as it is now constituted. The proceedings of the said judicial committee are irrelevant, that is to say, the internal conduct of that committee is not in issue. Neither the power of such

committee to reverse placings nor the regularity of its proceedings is questioned in the Statement of Claim. The result is a known result, and, as the case is presented to me, the sole question is whether "race day placings" are on the order in which the judge placed the horses (which is not in question) or the order in which the judicial committee declared the placings after due inquiry (which order also is not in question). The inquiry, as an inquiry, is not under impeachment. I do not understand Counsel's claim that justice requires Plaintiff to be put in a position that he can scrutinise the proceedings of the judicial committee. That must be done in a different proceeding.

The motion is refused and costs are reserved.

Solicitors:

Hogg, Gillespie, Carter & Oakley, Wellington, for Plaintiff.  
Tanner, Fitzgerald & Co., Hamilton, for Defendants.