3/12

IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

A. No. 13/84

1458

BETWEEN GREEN of Mangakino, Shopkeeper

PLAINTIFF

A N D GREEN of Mangakino, Shopkeeper

DEFENDANT

Hearing : 31st October 1984

Counsel : M.S. McKechnie in support
J.H. Olphert to oppose

Judgment : 13TH November 1984

JUDGMENT OF SINCLAIR J.

The defendant seeks to administer certain interrogatories to the plaintiff with the plaintiff resisting that application. It is necessary to refer briefly to the proceedings which arise out of the fact that the parties to this action lived for a number of years in a de facto relationship and they have been conducting a business at Whakamaru which appears to have been reasonably successful, that business being known as Ponderosa Enterprises Ltd.

The relationship of the parties has come to an end and the female plaintiff has now applied to the Court for a declaration that she is entitled to certain assets which

are now registered either in the joint names of the parties or in the names of one or other of the parties solely. One of the assets is the sum of $30,000 which has been placed on deposit with the Bank of New Zealand at Mangakino in the joint names of the plaintiff and defendant and it is alleged by the plaintiff that that sum represents income from the business as to one-third, while the remaining two-thirds, or $20,000, is alleged by the plaintiff to be money which she won at the races, in other words, as a result of betting.

The defendant, by his statement of defence, denies that allegation and claims that the money in the bank represents income from the business and is correctly held by the bank jointly for the benefit of both the plaintiff and the defendant. By the interrogatories which he seeks to administer the defendant seeks to obtain information as to the betting transactions upon which the plaintiff relies in respect of her allegation in relation to the above sum of $30,000.

Discovery has been completed by both parties and the plaintiff's affidavit of documents does not disclose any documents relating to any betting transactions at all, while the defendant's affidavit of documents disclosed one item in the first part of the first schedule which could be related to some betting but it is simply described as "race books". It was suggested by Mr. Olphert, in opposing the application for interrogatories, that by reason of the defendant's disclosure of the race books, that he already had the necessary information which he seeks to obtain by

way of interrogatories but I am not able to draw that inference from the documents at all. I have no means of knowing whether the race books in question are those which are said to have anything to do with the plaintiff's betting transactions and I observe that her affidavit of documents does not refer to any race books at all, either as having been in her possession or as being now in her possession. If it is alleged that the race books which are now in the defendant's possession are those which originally came from the plaintiff and from which her betting transactions were carried out, then she has failed to disclose that fact in her affidavit of documents.

In respect of this particular allegation made by the plaintiff the onus of proof rests on her shoulders and it will be for her to establish,on the balance of probabilitie that the sum of $20,000 now in the Bank of New Zealand at Mangakino was accumulated as the result of betting transactior entered into by the plaintiff. She will need to establish to the Court's satisfaction the precise manner in which the money is alleged to have been accumulated, particularly in view of the defendant's denial and his assertion that the whole of the amount on deposit with the bank represents profits from the business at Whakamaru.

Mr. Olphert relied on certain statements which appear in the judgment of the Court of Appeal in Knight v Gous C.A. 83/83 26th July 1984. I accept without question the statement which appears at page 5 of the judgment of the Court that interrogatories which are irrelevant, unreasonable

or oppressive will be disallowed. But the judgment goes on to state, whether such interrogatories are to be so described depends not only on the nature of the interrogatory but also, on the nature and state of the action and its ripeness for discovery. In the instant case it appears that the pleading has been completed as has discovery so that the action, once all interlocutory matters are completed, can be set down for trial. But in Knight v Gous it was the plaintiff who was seeking to administer a large number of interrogatories and, as was observed by the Court of Appeal, to allow many of the interrogatories would have been to have inverted the proper course of litigation.

That is not the case with the instant application. It is the defendant who is seeking to interrogate the plaintiff in respect of allegations made by the plaintiff. Interrogatories which will result in admissions being made by one party, particularly in a situation such as exists here, have always been permitted and it cannot be said that the interrogatories, as submitted, save for the possibility of one interrogatory, are oppressive or unreasonable.

The first set of three interrogatories simply seeks to ascertain the sources from which funds were derived and utilised in the betting transactions, the date or dates on which funds were derived and the amount involved in each instance. The second set of four interrogatories are directed to ascertaining the period of time during which the money was won and the dates on which money was won or lost in betting transactions, together with details of the amount which

were so won or lost.

The third class of interrogatories sought to be administered are directed to ascertaining the nature of the betting transactions which were entered into by the plaintiff, namely, whether the winnings were from doubles betting, quinella betting, or otherwise and also whether the betting transactions were carried out through the agency of the Totalisator Agency Board and, in particular, whether any telephone account was operated upon by the plaintiff in relation to these transactions. All of the above interrogatories proposed to be put to the plaintiff by the defendant are, in my view, matters which can be so put within the established rules of law and accordingly they are allowed.

The final interrogatory is that which is contained in interrogatory 3(d) and asks the plaintiff to disclose whether any betting was with bookmakers. Possibly, that interrogatory could be allowed, leaving it to the plaintiff herself to decline to answer it on the grounds that it may incriminate her but even such an answer may have on-going effects, for example, if such an answer came to the attention of the racing authorities steps may be taken to investigate her under the provisions of the rules of racing and there could be some unfortunate consequence for the plaintiff. In all the circumstances, I consider it would be oppressive to require the plaintiff to answer that particular interrogatory and it is disallowed.

No objection was taken to the form of the interrogatories so that each of the remaining proposed interrogatories

is allowed and there will be an order directing the plaintiff to answer them within 21 days after service of the order. The costs of and incidental to this motion are reserved.

P.D. Ineson J.

Solicitors :

Plaintiff	:	McKinnon, Garbett & Co., Hamilton.
Defendant	:	McKechnie, Morrison & Shand, Rotorua.