7 August 2020

**ADJOURNMMENT RULING**

**GREYHOUND RACING VICTORIA**

**and**

**BEN DIVIRGILIO, RINALDO DIVIRGILIO & CHRIS SCANLAN**

**Date of Ruling:** 30 July 2020

**Panel:** Judge John Bowman (Chairperson), Judge Graeme Hicks (Deputy Chairperson) and Justice Shane Marshall (Deputy Chairperson).

**RULING**

These matters had been listed for hearing before us on 10, 11 and 12 August 2019. Mr Ben Divirgilio and Mr Rinaldo Divirgilio are pleading ‘not guilty’ to the charges against them. Mr Ben Divirgilio is represented by Mr Lynton Hogan of Counsel, instructed by Mr David Skeels. Mr Rinaldo Divirgilio is represented and assisted by Mr Brian Selleck, who is a not a legal practitioner, but is a friend of Mr Divirgilio. Mr Scanlan is represented by Mr Paul Horvath, Solicitor. Mr Scanlan is pleading ‘guilty’ to the charges against him.

When these matters were originally fixed for hearing, the cases were to be conducted at the County Court. It was considered that they were not appropriate matters for a telephone link-up. Further, the case against Mr Scanlan was to be conducted after the cases against Mr Ben Divirgilio and Mr Rinaldo Divirgilio had been completed.

Unfortunately, with the changing situation in relation to the Covid-19 situation, the accommodation at the County Court became unavailable, originally until 20 August 2020. Of course, that unavailability may be extended, and possibly for quite a lengthy period.

It was then proposed by the Tribunal that the cases be heard by way of Microsoft Teams or Webex on the allocated hearing dates. This has been opposed by both Mr Ben Divirgilio and Mr Rinaldo Divirgilio. We might add that it seems fair and logical that their cases be heard together. Mr Scanlan maintains his position that the case against him should not be heard until the cases against the Messrs Divirgilio are concluded, and should also be adjourned in the event that their adjournment applications are successful. The Stewards oppose that application. We say now that we are not particularly impressed by the arguments advanced on behalf of Mr Ben Divirgilio. Basically, we are not persuaded that, in these difficult times, the charges against him could not be conducted by means of a virtual hearing.

However, the situation in relation to Mr Rinaldo Divirgilio is another matter. We accept that neither Mr Rinaldo Divirgilio nor Mr Selleck who is assisting him, possess any technological skills. Neither has any familiarity with Microsoft Teams or Webex. Neither has any computer skills. Both live a considerable distance from Melbourne and in a rural setting. No fair alternative to a hearing in person would seem to exist.

We also take into account that this is not a situation in which Stays are operating. Those involved face serious animal welfare charges and Stays have not been granted. Whilst it is highly desirable that these matters be heard as quickly as possible, it is not a situation where there is any prejudice caused to the Stewards, to the industry, or to its image by a reasonable delay. It is not a situation where parties appear to be carrying on with their normal industry-related activities despite facing serious charges.

The bottom line is this. The contested cases against Messrs Divirgilio should be heard together and that has always been the situation. The case against Mr Rinaldo Divirgilio should, in fairness, be adjourned until a hearing in person can be conducted. Therefore, the hearing against Mr Ben Divirgilio should also be adjourned.

The case involving Mr Scanlan was to be heard after the conclusion of the cases against the Messrs Divirgilio. That continues to be his strong preference and, in the circumstances, it seems to us to be reasonable and appropriate.

Accordingly, the hearing dates of 10, 11 and 12 August are vacated. We would suggest that a directions hearing be conducted by telephone at a date convenient to the parties, but perhaps in approximately four weeks’ time, when we may have further information concerning the availability of the County Court or of other appropriate accommodation.

The Registrar shall liaise with the parties accordingly.

Mark Howard
Registrar, Victorian Racing Tribunal