30 May 2022

**RULING**

**RACING VICTORIA**

**and**

**SHEA EDEN**

**Date of hearing:** 9 May 2022

**Panel:** Judge John Bowman (Chairperson) and Judge Graeme Hicks.

**Appearances:** Mr Albert Dinelli, instructed by Mr Scott Hunter, appeared on behalf of the Stewards.

Mr Damian Sheales appeared on behalf of Mr Eden.

**Charge:** Australian Rule (AR)227(a) states

Without limiting any other powers, a PRA or the Stewards may penalise any person who:

(a) commits any breach of the Rules, or engages in conduct or negligence which has led or could have led to a breach of the Rules;

**Particulars of charge:** 1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.

2. From 21 November 2018 to 14 April 2021, you were the trainer of Bless Her (the Horse).

3. You believed that you owned 50% of the Horse (either alone or together with your wife) from circa 21 November 2018 to circa 14 April 2021, in accordance with an alleged verbal agreement between you and Mr Troy Wilson.

4. Mr Troy Wilson disputes that you (or you and your wife) ever held a 50% share in the Horse.

5. Even though you believed that you (or you and your wife) owned 50% of the Horse during the dates listed in particular 3, and the Horse raced on 11 occasions during those dates, you never sought to register this interest and/or declare this interest with Racing Australia or Racing Victoria.

6. Your failure to act, as described in particular 5, constitutes conduct and/or negligence which could have led to a breach of the Rules of Racing, including:

a. AR 38(1) (which was deleted on 1 May 2021);

b. AR 60(1)(a);

c. AR 62(1);

d. AR 103(4)(c)(i) (which was deleted on 1 May 2021); and/or

e. AR 228(a).

7. Your conduct and/or negligence as described in particular 5, could have led to a breach of the Rules of Racing if it had been established by a Court or Tribunal and/or conceded by Mr Troy Wilson that you (or you and your wife) were 50% owners of the Horse, as believed by you.

**Plea:** Not Guilty

**RULING**

1. **BACKGROUND**

A preliminary point has arisen in this matter in relation to the wording of the charge laid. That charge arises out of what could be summarised as being an ownership dispute relating to the horse *Bless Her.* The relevant persons are on the one hand, licensed trainer Mr Shea Eden, and on the other, owner Mr Troy Wilson. For the purposes of this Ruling, we omit references to the spouses of Mr Eden and Mr Wilson.

The Tribunal inherently is not like a court of record – See Section 50Q(1)(j) of the Racing Act 1958. Disputes concerning what could be described as pleadings are a rarity. However, the preliminary point raised for our determination in this case has some resemblance to such a dispute. Mr Sheales, for Mr Eden, effectively submitted that the wording of the Particulars of the charge laid against him does not disclose an offence pursuant to the Rules. Mr Dinnelli, on behalf of the Stewards, argued to the contrary. We would point out that the Stewards at no stage made application to amend any of the Particulars and indeed Mr Dinnelli specifically stated that no such application would be made.

Questions of law have been dealt with in accordance with Section 50X of the Racing Act 1958.

1. **THE CHARGE**

The Charge itself against Mr Eden alleges breaches of various Rules. The Particulars could be summarised as being as follows:-

Mr Eden, who, at the relevant time was the trainer of the horse, believed that he owned 50% of *Bless Her*. Mr Wilson disputed that. Even though he believed that he was an owner, Mr Eden did not register his ownership. This conduct could have constituted a breach of various Rules, including AR 228 (a). This conduct or negligence could have led to a breach of the Rules of Racing if it was found by a Court or the Tribunal, or conceded by Mr Wilson, that Mr Eden was an owner, as he maintained. This last particular received attention. The Particulars of the Charge are set out in greater detail in the Face Sheets of this document.

1. **THE ISSUES**

After some early excitements and pyrotechnics, the submissions of Mr Sheales on behalf of Mr Eden focussed upon a comparatively narrow issue. This could be summarised as being that the Particulars of the Charge do not disclose an offence within the meaning of the applicable Rules – they being AR 38(1); AR 60 (1)(a); AR 62(1); AR 103 (4)(c)(i); and AR 228(4).

As stated, Mr Dinelli submitted to the contrary.

Each counsel spoke to detailed written submissions.

Particulars 5, 6 and 7 of the Notice of Charge received considerable attention. They read as follows:

“5. Even though you believed that you (or you and your wife) owned 50% of the Horse during the dates listed in particular 3, and the horse raced on 11 occasions during those dates, you never sought to register this interest and/or declare this interest with Racing Australia or Racing Victoria.

6. Your failure to act, as described in particular 5, constitutes conduct and/or negligence which could have led to a breach of the Rules of Racing…”. (The applicable Rules, as set out above, are then listed).

7. Your conduct and/or negligence as described in particular 5 could have led to a breach of the Rules of Racing if it had been established by a Court or Tribunal and/or conceded by Mr Troy Wilson that you (or you and your wife) were 50% owners of the Horse, as believed by you”.

Mr Sheales effectively argued that Particular 7 illustrated and illuminated the absurdity of the Charge.

We might add that whether or not the Stewards are in fact relying on Particular 7 seems doubtful. In his written submissions, Mr Dinelli stated that the Stewards did not need to rely upon Particular 7 and it could be treated as being deleted for the purposes of the hearing. He argued that it was not necessary for the Tribunal to make a finding as to whether Mr Eden was or is an owner of *Bless Her* in order to make out the Charge. In any event, he argued that the irresistible inference to be drawn from the evidence is that Mr Eden had an interest in *Bless Her.*

Whilst it is not entirely clear, the situation seems to be that Particular 7 remains as part of the Charge, but the Stewards place no, or no great, reliance upon it. However, this does not seem to us to mean that there can be no reference to Particular 7 or an argument that, at least at some stage, it was illustrative of the approach adopted by the Stewards. We would refer to *Ross v Harness Racing NSW [2020]* NSWSC 1397.

As we understand it, the case for the Stewards then becomes that Mr Eden, at all relevant times, believed, and indeed argued, that he had a 50% interest in *Bless Her*. Despite that belief, the horse raced on 11 occasions without Mr Eden registering or declaring his interest in the horse, of which he was the licensed trainer. Thus, it is argued, the breach of the relevant Rules is established without the need for recourse to Particular 7.

We would point out the following. Particular 4 asserts that Mr Wilson disputes the proposition that Mr Eden ever held a 50% share in *Bless Her*. Thus, if there is no reliance upon particular 7, Particular 5 becomes a key allegation. It effectively asserts that, even though Mr Eden believed that he owned 50% of *Bless Her*, during the relevant period he never sought to register or declare that interest.

We should add that an additional piece of information concerning this dispute is that there was litigation between the parties issued out of the County Court of Victoria. The action was initiated by Mr Wilson and was directly related to the issue of ownership of the horse. The litigation settled shortly after mediation. By consent, the action was dismissed, with no order as to costs. There is no dispute but that Mr Wilson retained a 100% interest in *Bless Her* and Mr Eden received a cash amount. It is not for us to speculate as to the terms of settlement or to rely on the settlement as being a factor of any significance. The only order was a dismissal, with no order as to costs.

In summary, we are of the view that the settled civil litigation is not a factor of importance. The litigation was not on foot at the time of the alleged offending. It settled without any formal orders other than a dismissal and no order to costs – orders frequently seen in settled civil litigation. The test in civil litigation is different from that in a Tribunal disciplinary hearing – the balance of probabilities, as opposed to the *Briginshaw* test of comfortable satisfaction. In short, we are of the view that the existence of the settled civil litigation is of little significance or assistance.

1. **FINDINGS**

Against that background, we turn now to our findings.

There is no argument as to Particulars 1-4 of the Notice of Charge. At all relevant times from 21 November2018 to 14 April 2021 Mr Eden was the trainer of *Bless Her* (Particulars 1 and 2). Mr Eden believed that he owned 50% of *Bless Her* during that period, allegedly in accordance with a verbal agreement with Mr Wilson (Particular 3). Mr Wilson disputes that Mr Eden ever held such a share (Particular 4).

There is also effectively no dispute as to Particular 5. Mr Eden did not seek to register or declare an interest in the horse.

The relevant Rules are set out in Particular 6. Further, there is the assertion that Mr Eden’s failure to act, in the sense of declaring his interest in the horse, constituted conduct and/or negligence “which could have led to a breach of the Rules of Racing”, which are then listed and to which earlier reference has been made.

Particular 7, which is also set out above, refers to the conduct of Mr Eden as described in Particular 5. It is then asserted that such conduct “could have led to a breach of the Rules of Racing”, if it was established by a Court or Tribunal and/or conceded by Mr Wilson that Mr Eden was a part owner of *Bless Her.*

Thus, the key assertion against Mr Eden, as set out in Particulars 6 and 7, is that, even though he believed that he was an owner of *Bless Her* when she was racing, he did not register any ownership interest. This conduct or negligence “could have” (our underlining) led to a breach of the Rules. Particulars 6 and 7 are worded similarly – “could have”, “if it had been established” and the like.

Of course, at all relevant times Mr Wilson has denied that Mr Eden was ever a part-owner of *Bless Her* and litigation ensued.

Initially, on 10 March 2021 the Stewards asserted in writing to Mr Eden that they were of the view that *Bless Her* was “100% owned by Mr and Mrs Wilson” and that they, the Wilsons, were entitled to possession of the horse. They directed Mr Eden to release *Bless Her* to the Wilsons “within 48 hours of the receipt of this letter”.

After some correspondence, on 11 March 2021 the Stewards suspended the operation of the above direction.

On 19 March 2021, and after receiving detailed submissions from the parties, the Stewards forwarded a letter in slightly more conciliatory terms to Mr Eden. Nevertheless, they stated as follows:

“…we maintain a preliminary view that the Horse is 100% owned by the Registered owners” – that is, the Wilsons.

It was added that the horse should be “with the Registered owners”, rather than in the possession of Mr Eden. Pursuant to AR 20(a), Mr Eden was “directed to allow the Registered owners to take possession of the Horse”.

Interestingly, this piece of correspondence also stated as follows:-

“Ultimately, the determination as to whether Mr and Mrs Eden are 50% owners in the Horse, will either be resolved privately by the parties or by a Court or Tribunal of competent jurisdiction”.

Thus, we have a situation where the Stewards were effectively declaring and maintaining, if in softer tones, that *Bless Her* was ”100% owned by the Registered owners”, being the Wilsons. However, Mr Eden has in essence been charged with behaviour that could have led to a breach of the relevant Rules by reason of his failure to declare that he and his wife were owners.

In other words, the Stewards have stated that, at the relevant time, the Edens were not the owners, but, nevertheless, Mr Eden is charged with a breach of the Rules. This is essentially by reason of his failure, despite the Stewards’ finding, to assert that he was an owner.

Further, the charge laid is to the effect that Mr Eden could have breached the various Rules upon which reliance is placed, not that he did breach them. In this regard, we agree with the submissions of Mr Sheales. If anything, Particular 7 demonstrates the flaw in the arguments of the Stewards, whether or not reliance on that provision is effectively abandoned.

In essence, Mr Eden is charged with conduct that could have led to the breaches of various Rules, if the very assertion of the Stewards that he was not an owner of *Bless Her* turned out to be erroneous.

In our view, a charge drawn in this way cannot be maintained. To ask a rhetorical question, how can the Stewards validly assert, “You have 0% proprietorial interest in this horse. Hand it over to the real owner” and then also state “However, we are going to charge you with being a person who could have a 50% proprietorial interest in the horse and not disclosing that interest, an interest which we say never existed”.

Of course, the end result, after the settled litigation, is that Mr Eden has a 0% proprietorial interest in *Bless Her.*

Further, we do not see how the conduct of Mr Eden breached any of the Rules relied upon by the Stewards.

Turning firstly to AR 228 (a), we cannot grasp how Mr Eden can be said to have engaged (or could have engaged) in conduct prejudicial to the interests of racing by failing to disclose an ownership interest which the Stewards have specifically stated, in writing, that he did not have. Further, no Court or Tribunal has stated that he had such an interest.

In addition, Particulars 6 and 7 of the Charge are each expressed in terms of “could” – Mr Eden’s conduct could have led to a breach of the Rules – not “did lead to” or “did constitute a breach of the Rules”.

None of the relevant Rules, including AR 228 (a), speak in terms of “could”. That is leaving to one side the fact that two of the Rules in question were no longer operative when the charges were laid.

We again ask rhetorically, how could a charge pursuant to AR 228 (a) have any prospects of success when it is based upon a failure to disclose an interest in ownership, which interest the Stewards themselves stated did not exist.

Turning to the alleged breaches of other Rules, AR 38(1) is prefaced by the words “If a registered horse is transferred to a new owner, that new owner etc…”. Whether or not such a transfer occurred in the present case takes us back to the very heart of the dispute and to the arguments set out above. Further, apparently AR 38(1) was deleted on 1 May 2021.

Similarly, AR 60 (1)(a), which deals with requirements in relation to entry forms and Stable Returns, takes us back to the same set of problems. The Stewards and Mr Wilson have asserted that Mr Eden had no share in ownership or leasing of the horse.

AR 62 (1) states, in essence, that a person must not, in the opinion of a PRA or the Stewards, (our underlining), fail to declare any share or interest in a horse. In the present case, the opinion of the Stewards, effectively twice expressed, was that Mr Wilson owned 100% of *Bless Her.* Their opinion was that Mr Eden had no proprietorial interest in the horse and there is no decision, by the Stewards or in any form of litigation, to the contrary.

AR 103 (4)(c)(i), which was also deleted on 1 May 2021, concerns the lodging of amendments to Stable Returns. Clearly, in the present case, it was the opinion of the Stewards, expressed in writing, that no relevant particular had changed.

In summary, each alleged breach seems to us to be without a proper foundation.

**CONCLUSION**

We agree with Mr Sheales. We consider this to be a flawed charge, which could not succeed on the basis of the material presented to us.

We shall hear the parties as to any proposed orders.

Mark Howard
Registrar, Victorian Racing Tribunal