HIGH COURT OF AUSTRALIA

30 March 2012

SPORTSBET PTY LTD v STATE OF NEW SOUTH WALES & ORS

[2012] HCA 13

Today the High Court dismissed an appeal from the Full Court of the Federal Court of Australia, which had held that approvals given to Sportsbet Pty Ltd ("the appellant") by Racing New South Wales and Harness Racing New South Wales ("the respondents") to use race field information for wagers, but only upon payment of fees to the respondents, were validly granted under the *Racing Administration Act* 1998 (NSW) ("the Racing Act"). The High Court heard this appeal concurrently with that in *Betfair Pty Limited v Racing New South Wales* [2012] HCA 12.

The appellant holds a sports bookmaking licence, which authorises it to accept wagers by telephone and over the internet. From its principal place of business in the Northern Territory, the appellant receives wagers from anywhere in Australia on races, sporting and other events, including horse races held in New South Wales. Section 33 of the Racing Act makes it an offence for a wagering operator to use information regarding horse races held in New South Wales, unless approval has been granted and the operator complies with conditions to which the approval is subject. Pursuant to s 33A of the Racing Act, each of the respondents (as a "racing control body" within the meaning of that provision) granted the appellant approval to use such information, subject to the condition that it pay certain fees. Under Pt 3 of the Racing Administration Regulation 2005 (NSW) ("the Regulations"), the fees were calculated by reference to the appellant's wagering turnover. If the appellant's wagering turnover was below a certain threshold, the appellant would not have been liable to pay a fee; however, the appellant's wagering turnover exceeded that threshold amount.

The appellant challenged both the respondents' power to grant the approvals and, more broadly, the validity of ss 33 and 33A of the Racing Act and Pt 3 of the Regulations. The basis of the appellant's challenge was that the respondents' power, under the Racing Act and the Regulations, to grant the approvals subject to payment of the fees imposed a burden or disadvantage on trade and commerce between the Northern Territory and New South Wales, which was not imposed on intrastate trade and commerce of the same kind. The appellant contended that the legal or practical effect of the legislation was to protect New South Wales wagering operators from competition from wagering operators in the Northern Territory.

Section 49 of the *Northern Territory (Self-Government) Act* 1978 (Cth) ("the Self-Government Act") provides that trade, commerce and intercourse between the Northern Territory and the Australian States "shall be absolutely free". The primary issue arising from the appellant's challenge was whether the respondents' power of approval, as conferred by the Racing Act and the Regulations, must be confined to avoid inconsistency with s 49 of the Self-Government Act. Under s 109 of the Constitution, where inconsistency arises between a law of a State and a law of the Commonwealth, the latter prevails and the State law will be invalid to the extent of the inconsistency.

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A single judge of the Federal Court declared that the approvals granted by the respondents were invalid, but rejected the broader contention that ss 33 and 33A of the Racing Act and Pt 3 of the Regulations were invalid. On appeal, the Full Court held that the approvals were validly granted, and upheld the validity of the impugned provisions of the Racing Act and the Regulations. The appellant appealed, by special leave, to the High Court of Australia.

The High Court dismissed the appeal, with the result that the approvals given by the respondents, conditioned upon the payment of the fees, are valid. The High Court held that the wagering turnover thresholds were not discriminatory measures of a protectionist kind. Both intrastate and out of State competitors, including the appellant, were entitled to the benefit of wagering turnover thresholds. The burden of the fees was imposed uniformly on both intrastate and out of State wagering operators. Further, and in any event, there was no necessary connection between the location from which a wagering operator conducted its business and the turnover of that business.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*