Rombola v. Cosindas

220 N.E.2d 919 (Mass. 1966)

. . . By the terms of a written contract with Cosindas, Rombola agreed to train, maintain and race Cosindas's horses, Margy Sampson and Margy Star, for the period November 8, 1962, to December 1, 1963. The present action relates only to the horse Margy Sampson. Rombola was to assume all expenses and to receive seventy-five per cent of all gross purses; Cosindas was to receive the remaining twenty-five per cent. Rombola took possession of Margy Sampson and, because there was no winter racing in the area, maintained and trained her at his stable throughout the winter. In the spring and summer of 1963, Rombola entered the horse in a total of twenty-five races, run at four racing meets which were held at three different racetracks. In the fall, Rombola entered Margy Sampson in six stake races in a thirty-three day meet to be held at Suffolk Downs. The expiration date of Rombola's contract coincided with the closing date of the meet. In stake races, horses run against others in their own class. Horses are classified or rated according to the amount of money they have won. Margy Sampson had already raced against several of the horses who were entered in the six stake races scheduled for the Suffolk Downs meet. On October 25, 1963, before the meet started, Cosindas, without Rombola's knowledge or consent, took possession of the horse at Suffolk Downs and thereby deprived Rombola of his right to race the horse. The horse did not race between October 25 and December 1, 1963.

To recover damages for breach of contract, the plaintiff must prove the damages with reasonable certainty. In certain situations, a court will hold that, as a matter of law, damages cannot be proven with reasonable certainty, and hence that the plaintiff is prohibited from introducing evidence in regard to the extent of the damages. The issue in this case is whether Rombola can introduce evidence of the extent of his damages.

On the issue of damages Rombola would show that generally, in a stake race, there are eight or nine starters and that the purse is shared by the first five finishers at diminishing percentages. The purse is determined before the race and is not affected by the amount of money wagered by patrons at the track. In the year preceding the contract, Margy Sampson as a three-year old had won a total of approximately $400-$450 in four races. In the year of the contract, of the twenty-five races in which the horse was entered by Rombola, she had won ten and shared in the purse money in a total of twenty races, earning, in all, purses approximating $12,000. In the year following the expiration of Rombola's contract with Cosindas, the horse raced twenty-nine times and won money in an amount almost completely consistent percentagewise with the money won during the period of the contract. . .

In determining the amount of damages to be awarded, mathematical accuracy of proof is not required. . . . The likelihood of prospective profits may be proved by an established earnings record. . . . Expert opinion may be introduced to substantiate the amount of prospective profits. . . .

We apply these principles to the present case. It appears that Margy Sampson had already been accepted as a participant in the stake races and transported to the site of the meet. She had already proved her ability both prior to and while under Rombola's management and training, over an extended period of time, against many competitors and under varying track conditions. Her consistent performance in the year subsequent to the breach negates any basis for an inference of a diminution in ability or in earning capacity at the time of the Suffolk Downs meet. While it is possible that no profits would have been realized if Margy Sampson had participated in the scheduled stake races, that possibility is inherent in any business venture. It is not sufficient to foreclose Rombola's right to prove prospective profits. . . . Her earnings record, while not conclusive, is admissible as evidence of the extent of damages caused by the breach...