

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION**

2015/CLE/gen/01694

IN THE MATTER of Section 84 of the Gaming Act, 2014

**IN THE MATTER of an appeal by BVC Holdings Ltd. d/b/a Bet Vegas
Casino against the decision of the Minister Responsible for Gaming,
refusal to grant a Gaming House Operators Licence**

**BVC HOLDINGS LTD.
(d/b/a Bet Vegas Casino)**

Appellant

AND

MINISTER OF TOURISM RESPONSIBLE FOR GAMING

AND

ATTORNEY GENERAL

Respondents

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. Jairam Mangra of Mangra & Mangra for the Appellant
Mr. Gary Francis and Mr. Audirio Sears of the Attorney-General
Chambers for the Respondents

Hearing Date: 20 January 2020

Civil Practice and Procedure - Gaming Act, 2014 – Section 85(22) of the Gaming Act, 2014

The substantive appeal is part-heard before me. There has been a number of adjournments principally because of the ill-health of the sole witness for the Appellant who has already testified. The Appellant has also closed its case. The Respondents are to open their case and call their sole witness. On the day scheduled for the continuation of the appeal, the Appellant, through its

Counsel, applied for yet another adjournment, citing the ill health of Mr. Brown. The Court opined that the appeal could proceed since the Appellant had closed its case.

The application for an adjournment prompted Counsel for the Respondents to orally apply for an order that the Appellant ceases the operation of its web shops pursuant to section 85(22) of the Gaming Act, 2014. The following day, the Respondents made a formal written application supported by an affidavit. Counsel submitted that the Appellant is not only operating without a licence but has tripled its operation from 4 (as per its application) to 12.

Counsel for the Appellant opposed the application submitting that it was premature but gave no reasons for its prematurity.

HELD: granting the application for the Appellant to cease the operation of all its gaming operations not later than 30 April 2020.

1. The application is not premature. The Appellant was advised since 19 October 2015 to close its operation since it was not granted a licence to operate. Instead, the Appellant has expanded its operation.
2. Section 85 Subsection (22) (b) of the Gaming Act, 2014 is very clear. It provides that business establishments in respect of which no licences have been awarded shall cease their operations on or before the cessation dates. Subsection 22(d) is also very clear and expressly provides that the obligation to cease the operation of businesses (such as that of the Appellant's) shall remain in force notwithstanding the institution of any proceedings for judicial review unless the court determines otherwise on substantial and compelling grounds. Put differently, the decision of the Minister prevails unless the Court determines otherwise. No Court has made such a determination.
3. The Appellant who seeks redress of the Court must come with clean hands. The ancient maxim of "*he who comes into equity must come with clean hands*" is far more than a mere banality. In the present case, the Appellant is operating its web shops without a licence and has even expanded its operation to other Family Islands.

RULING

- [1] The substantive appeal is part-heard before me. In its Notice of Appeal filed on 2 November 2015, the Appellant, through its Chief Executive Officer, Mr. Brown challenged the decision of the Minister of Tourism Responsible for Gaming ("The Minister") alleging, among other things, that the Minister's decision for the Appellant to cease operation of its web shops throughout The Bahamas was unreasonable and unsatisfactory having regard to all the circumstances and that the Appellant has a legitimate expectation to qualify for a licence to operate its web shops.

- [2] Mr. Brown was the only witness for the Appellant. He has already testified and the Appellant closed its case on 13 November 2017. The Respondents are to continue with their evidence.
- [3] Yesterday was the day for the continuation of the substantive appeal. Learned Counsel Mr. Mangra who appeared for the Appellant made an application seeking an adjournment of the appeal on the basis that Mr. Brown had to seek urgent medical attention. The Court opined that since Mr. Brown had already testified and the Appellant had closed its case, his presence was not necessary and therefore, the Court proposes to continue with the appeal noting that there had been several adjournments mainly because of Mr. Brown's illness.
- [4] The application for an adjournment prompted Counsel for the Respondents, Mr. Francis to make an oral application pursuant to section 85(22) of the Gaming Act, 2014 for the Appellant to cease the illegal operation of its web shops. That oral application was supplemented by a formal application in writing supported by an affidavit which was filed the following day.
- [5] Mr. Francis submitted that, since 26 October 2015, the Appellant was advised to cease the operation of its web shops and has failed and/or refused to do so. Mr. Francis referred to a letter written to the Appellant by the then Secretary of the Gaming Board, Mr. Scott, on 19 October 2015. The letter, in part, states:

“We hereby regret to advise that pursuant to section 31(3) of the Gaming Act, 2014 and in accordance with section 85(22) of the Act, the Hon. Obediah Wilchcombe, Minister Responsible for Gaming, has not awarded a Gaming House Operator Licence in respect of BET Vegas. Consequently, having not met its burden of proof in respect of the relevant minimum criteria for qualification outlined under the Act, BET Vegas has been disqualified. In the circumstances, you will be required to effect the closure of all BET Vegas locations by October 26th, 2015.”

- [6] Learned Counsel Mr. Mangra opposed the application and argued that it was premature. He did not expound on the reason(s) for its prematurity. I surmised that

it might be because the hearing of the appeal is continuing. However, this does not prevent the Court from dealing with this application.

[7] Section 85 (22) of the Gaming Act, 2014 provides:

“In the event that the Minister fails to set a date for the closure of the businesses referred to in subsection (16) prior to the award of gaming house operator and gaming house premises licences by the Minister-

(a) the Board shall, within two days of being informed of the decision of the Minister regarding the award of such licences, cause to be served on all the business establishments which have elected to continue the operation of their business under subsection (18), a written notice advising such business establishments of the decision of the Minister and requiring every business establishment in respect of which no gaming house premises licence has been awarded by the Minister, to effect the closure of such businesses within seven days of service of such written notice (hereinafter referred to as “the cessation date”);

(b) the business establishments in respect of which no licences have been awarded shall cease their operations on or before the cessation dates;

(c) the transitional period shall be deemed to have ended on the cessation date; and

(d) the obligation to cease the operation of such businesses shall remain in force notwithstanding the institution of any proceedings for the judicial review of the decision of the Minister in respect of the award of the licences, unless the court, on application by the party seeking the review of such decision, finds that there are substantial and compelling grounds to order otherwise.”[Emphasis added]

[8] Subsection (22) (b) of the Gaming Act, 2014 is very clear. It provides that business establishments in respect of which no licences have been awarded shall cease their operations on or before the cessation dates. Subsection 22(d) is also very clear and expressly provides that the obligation to cease the operation of businesses (such as that of the Appellant’s) shall remain in force notwithstanding the institution of any proceedings for judicial review unless the court determines otherwise on substantial and compelling grounds.

- [9] Put differently, the institution of judicial review does not operate as a stay to the decision of the Minister unless the court finds that there are substantial and compelling reasons to order otherwise. No Court has made such a determination. Therefore, the decision of the Minister prevails.
- [10] It is undisputed that the Appellant continues to operate its gaming business up to this very moment. I was informed that the Appellant's business has tripled to 12 web shops (whereas the application was for 4). This evidence was not refuted by the Appellant.
- [11] In the circumstances, I will make an order that the Appellant shall cease the operation of all BET Vegas Casino gaming operations and related facilities within The Bahamas not later 30 April 2020. The Respondents shall be entitled to their costs to be taxed if not agreed. I will summarily assess costs on 17 February 2020 at 2:30 p.m.
- [12] Additionally, an appellant who seeks redress of the court must come with clean hands. The ancient equitable maxim that ***"he who comes into equity must come with clean hands"*** is far more than a mere banality. The Court cannot ignore Mr. Brown's evidence during cross-examination that the Appellant continues to operate without a gaming licence and has even expanded its operation to other Family Islands.

Dated this 21st day of January, A.D. 2020

**Indra H. Charles
Justice**