Centrebet Pty Ltd v Baasland [2013] NTSC 59

PARTIES:	**CENTREBET PTY LTD (ACN 106 487 736)** v **BAASLAND, Bjarte**
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	101 of 2012 (21237777)
DELIVERED:	19 September 2013
HEARING DATES:	8 July, 13 September 2013
JUDGMENT OF:	HILEY J

CATCHWORDS:

PRIVATE INTERNATIONAL LAW – Declarations – Negative declarations – Power to declare - Gambling contract – Need for utility in the declaration being sought - Absence of defendant duly served under Hague Convention – Similar declaration made in United Kingdom in relation to the same defendant based upon identical allegations made against another provider

PRIVATE INTERNATIONAL LAW – Choice of law - Jurisdiction - Applicable law – Parties stipulated Australian law – Foreign court asserts jurisdiction – Foreign court may apply own law – Appeal pending

PRIVATE INTERNATIONAL LAW – Forum non conveniens - Stay of proceedings where proceedings already commenced in another country – Substantive proceedings in foreign court delayed - Local forum not “clearly inappropriate” – Not vexatious or oppressive for local proceedings to continue – Enforceability of foreign judgment in Australia

TORTS – Betting and gaming – Internet betting – No duty of care owed to gambler – Gambler used money borrowed under false pretences

Foreign Judgments Regulations 1992 (Cth)
Supreme Court Act 1979 (NT), s 18
Supreme Court Rules 1987 (NT), r 7.02

Akai Pty Ltd v People's Insurance Co Ltd (1996) 188 CLR 418; *Forster v Jododex Australia Pty Ltd* (1972) 127 CLR 421; *Kakavas v Crown Melbourne Limited* [2013] HCA 25; *Nicvira Nominees Pty Ltd & Ors v Humich Nominees Pty Ltd & Ors* [2001] WASC 243; *Oceanic Sun Line Special Shipping Company Inc v Fay* (1988) 165 CLR 197; *Puttick v Tenon* (2008) 250 ALR 582, applied.

Calvert v William Hill Credit Limited [2008] EWCH 545 (ChD); *Hillside (New Media) Ltd v Baasland & Ors* [2010] 2 CLCQB 986, discussed.

Ainsworth v Criminal Justice Commission (1992) 175 CLR 564; *Centrebet Pty Limited v Baasland* [2012] NTSC 2012; *Commonwealth Bank v White* [1999] 2 VR 681; *Commonwealth v Sterling Nicholas Duty Free Pty Ltd* (1972) 126 CLR 297; *Emmanuel v Symon* [1907] 1 KN 302; *Global Partners Fund Ltd v Babcock & Brown Ltd* (2010) 267 ALR 144; *Greenwich Healthcare National Health Trust Service v London and Quadrant Housing Trust and Ors* [1998] 1 WLR 1749; *Henry v Henry* (1996) 185 CLR 571; *Hume v Munro (No 2)* (1943) 67 CLR 461; *Independent Trustee Service Ltd v Morris* (2010) 79 NSWLR 425; *Messier-Dowty Ltd and Anor v Sabena SA and Ors* [2000] 1 WLR 2040; *Peruvian Guano Company v Bockwoldt* (1883) 23 Ch D 225; *Regie Nationale Renault v Zhang* (2002) 210 CLR 491; *Saipem SpA v Dredging VO2 BV and Geosite Surveys Ltd (The Volvox Hollandia)* [1998] 2 Lloyds Rep 361; *TS Productions LLC v Drew Pictures Pty Ltd* (2008) 172 FCR 433; *Voth v Manildra Flour Mills Pty Ltd* (1990) 171 CLR 538, referred to.

DR Williams, 'The Form and Effect of Declaratory Relief and the Negative Declaration' in Kanaga Dharmananda and Anthony Papamatheos (eds), *Perspectives on Declaratory Relief*, (Federation Press, 2009); M Leeming, 'The Negative Declaration in Australian and United States Federal Courts' (2004) 12 *Australian Journal of Administrative Law* 55; Lord Woolf and Jeremy Woolf, *The Declaratory Judgment* (Sweet & Maxwell, 4th ed, 2011);

E Borchard, *Declaratory Judgments* (Banks-Baldwin Law Publishing Co., 1941), referred to.

REPRESENTATION:

Counsel:

	Plaintiff:	Alistair Wyvill SC
	Defendant:	

Solicitors:

	Plaintiff:	Marque Lawyers
	Defendant:	

Judgment category classification:	B
Judgment ID Number:	Hil 1310
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Centrebet Pty Ltd v Baasland [2013] NTSC 59
No 101 of 2012 (21237777)

BETWEEN:

CENTREBET PTY LTD (ACN 106 487 736)
Plaintiff

AND:

BJARTE BAASLAND
Defendant

CORAM: HILEY J

REASONS FOR JUDGMENT

(Delivered 19 September 2013)

Contents

Introduction

[1] Between 2004 and August 2008 the defendant Bjarte Baasland (**Baasland**) engaged in internet gambling activities using the services provided by the plaintiff Centrebet Pty Limited (ACN 106 487 736) (**Centrebet**).

[2] On 7 May 2009 Baasland commenced proceedings against Centrebet in the Oslo District Court, Norway (the **Norway District Court Proceeding**). In that proceeding Baasland seeks damages from Centrebet as a result of gambling losses incurred by him since 2005. It is evident that most of the money that he used for internet gambling between then and 2008 was borrowed from family and friends under false pretences.

[3] On 11 October 2012 Centrebet commenced this proceeding by way of Writ (the **NT Writ**) in the Supreme Court of the Northern Territory (the **NT Supreme Court Proceeding**).

[4] In the Statement of Claim Centrebet seeks the following relief:

> 20.1 a declaration that the respective rights and obligations of Centrebet and Baasland are governed exclusively by, and are to be determined by reference only to, the law of the Northern Territory of Australia;
>
> 20.2 an account as between Centrebet and Baasland as to the true state of the account between them under the Contract in relation to the Subject Bets and the Subject Payments;
>
> 20.3 a declaration that the account as found is the true state of account between Centrebet and Baasland as to the true state of the account between them under the Contract in relation to the Subject Bets and the Subject Payments, particularly that

Centrebet has no liability to Baasland under the Contract or in relation to its performance;

20.4 a declaration that Baasland has breached the Ownership Warranty and further the Contract as alleged in paragraph 10 above;

20.5 a declaration that Baasland has breached s 52 of the *Trade Practices Act 1974* (Cth) (**TPA**) as alleged in paragraph 11 above;

20.6 damages for breach of warranty and breach of contract;

20.7 orders under s 82 and s 87 of the TPA;

20.8 in so far as it is necessary, an injunction restraining Baasland from prosecuting the Norway proceedings or seeking to enforce any judgment obtained from those proceedings;

20.9 interest on any damages awarded under s 84 of the *Supreme Court Act* (NT);

20.10 costs; and

20.11 insofar as it is necessary, an extension of time pursuant to s 44 of the *Limitation Act* (NT).

[5] On 24 May 2013 I made a number of orders, including that the following issues be tried on 8 July 2013:

(a) whether or not this proceeding should be stayed;

(b) if not, whether the plaintiff is entitled to any and if so what final relief as claimed in paragraphs 20.1 to 20.5 of the Statement of Claim;

(c) costs.

[6] This decision relates to those issues. As the determination of those issues relates to part only of the proceeding I shall refer to this as the **separate trial**.[1]

[7] Before considering those matters I will identify the materials tendered and outline some of the factual background. I shall then discuss questions relating to service and notification of the proceeding, general principles regarding negative declarations, and the potential liability of Centrebet to Baasland.

[8] The hearing of the separate trial proceeded in the absence of the defendant. The defendant had been served with the originating process and provided with other information regarding the separate trial and the proposed hearing of it on 8 July 2013.

[9] At the hearing on 8 July 2013 Mr Wyvill SC, senior counsel for the plaintiff, provided the court with a chronology and made submissions.

[10] Counsel also tendered the following materials:

(a) A four page document headed "Response to the Writ", dated 20 December 2012, purportedly signed by Baasland, and 2 attachments, and the envelope that contained those documents (Exhibit P1).

(i) The document contained submissions, entitled "Response to the statement of claim made by Centerbet in the writ of 11th of

[1] Cf *Supreme Court Rules*, r 47.04.

October 2012" and "Forum Non Conveniens – considerations when there are proceedings pending abroad", and a "conclusion", followed by the words "And the Defendant claims 1.That the Supreme Court of Northern Territory decides to stay the proceedings initiated by Centerbet by the writ of 11 October 2012."

(ii) Attached to that document were 2 exhibits. Exhibit 1 is a copy of a decision of the Norwegian Supreme Court dated 13 October 2010, and a translation thereof. Exhibit 2 is a copy of a (Norwegian language version of the) decision of the District Court of Oslo dated 6 August 2012.

(iii) The envelope was addressed to "Darwin Supreme Court GPO Box 3946, Darwin NT 0801 Australia".

(iv) Attached to the first page of the four page document is an orange sticky note that is endorsed with the words "Filed 17 Jan 2013". That indicates to me, and I find, that the envelope and its contents were received by this Court on or shortly before 17 January 2013.

(b) A bundle of documents from the Court's file and recorded as document 20 (part of Exhibit P2). This bundle of documents comprised:

(i) A letter to the Registrar of the Supreme Court signed by Mona Skoien of Ovre Romerike Tingrett dated 6 March 2013, stating that

the documents were delivered to Baasland at Ullersmo prison, Krosgrud on 4 March 2013. According to a stamp on the back of the letter, it was recorded as filed in the Supreme Court on 14 March 2013.

(ii) A letter in Norwegian dated 25 February 2013, from Ovre Romerike Tingrett addressed to Ullersmo prison, Krosgrud, which was returned to Ovre Romerike Tingrett on 6 March 2013 and which included an endorsement in Norwegian indicating that something had been done in respect of Baasland on 4 March 2013.[2]

(iii) A Request for Service Abroad of Judicial Documents, Form 7A-A (including a Certificate of Service for completion in Norway) dated 16 January 2013 from the Registrar of the Supreme Court of the Northern Territory addressed to the Norwegian Ministry of Justice and the Police.

(iv) The NT Writ, Form 5A, including the Statement of Claim, dated and filed on 11 October 2012 by the plaintiff, and a certified Norwegian translation of it dated 19 December 2012.

(v) A General Form of Order, Form 60C, granting leave to serve the NT Writ on the Defendant in Norway in accordance with the

[2] This is the Certificate of Service referred to in paragraphs [63]- [65] below.

Hague Service Convention[3] (the **Convention**), dated 1 November 2012 and authenticated on 12 November 2012, and a certified Norwegian translation of it dated 19 November 2012.

(vi) A Summary of Document to be Served, Form 7A-B, in English, undated. This document is accompanied by a certified translation of the document in Norwegian dated 18 December 2012.

(vii) A Certificate of Translation signed by Knut Hogne Engedal of Hansen & Engedal, dated 19 December 2012 and certifying that each of the Norwegian language translations referred to above are true and accurate translations of the corresponding English language originals. This certificate is provided in English and Norwegian.

(c) Document 26 from the Court file (also part of Exhibit P2). This says it is an "Attestation - Certificate" completed in conformity with article 6 of the Convention, certifying the service of a document upon Baasland at Ullersmo prison, Krosgrud signed by Mona Skoien adjacent to a seal entitled "Ovre Romerike Tingrett", along with a cover letter signed by Mona Skoien of Ovre Romerike Tingrett, dated 7 June 2013 addressed to the Registrar of the Supreme Court.

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3 *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, opened for signature 15 November 1965, 658 UNTS 163 (entered into force 10 February 1969).

(d) A document entitled "Response to Writ" and attachments, signed by Mr Baasland and dated 11 March 2013 and the envelope that contained those documents (Exhibit P3).

(i) This document and its attachments are identical to the Response to Writ signed by Baasland dated 20 December 2012 (Exhibit P1), except only for being dated 11 March 2013 and for the inclusion of one extra page, which appears to be a fax cover page, at the beginning of the copy of a (Norwegian language version of the) decision of the District Court of Oslo dated 6 August 2012. The fax cover sheet is in Norwegian.

(ii) The envelope was addressed to "Supreme Court of Northern Territory of Australia at Darwin, Supreme Court Building, GPO Box 3946, Darwin NT 0801 Australia" and there is a receipt stamp indicating that it was received on 19 March 2013.

(e) Affidavit of Anthony Terrence Clark sworn 12 October 2012 (Exhibit P4) (**Clark**). Mr Clark was the Manager of Regulatory Affairs at Centrebet between December 2001 and June 2012.

(f) Affidavit of Anthony Terrence Clark sworn 1 July 2013 (Exhibit P5) (**Clark #2**).

(g) Affidavit of John S. Gulbrandsen sworn 1 July 2013 (Exhibit P6) (**Gulbrandsen**). Mr Gulbrandsen is a lawyer in the firm of Bing

Hodneland, Norway, and has been acting for Centrebet in the proceedings commenced by Baasland against Centrebet in Norway. He has also been acting on the instructions of Centrebet's Australian lawyers in relation to this proceeding, including the service and notification of Baasland.

(h) Affidavit of Mark Anderson sworn 1 July 2013 (Exhibit P7) (**Anderson**). Mr Anderson was a Senior Project Manager in the Information Technology Division of Centrebet from about April 2004.

(i) Affidavit of Anthony Waller sworn 3 July 2013 (Exhibit P8) (**Waller**). Mr Waller is the Chief Operating Officer and Legal Officer of Sportingbet Australia Pty Limited (**Sportingbet**). Mr Waller has had dealings with Centrebet's Australian and Norwegian lawyers.

(j) Affidavit of Damian Bruce Sturzaker sworn 4 July 2013 (Exhibit P9) (**Sturzaker**). Mr Sturzaker is a solicitor and partner in the firm Marque Lawyers, the lawyers for Centrebet.

(k) Affidavit of Kiera Lee Peacock sworn 30 October 2012 (Exhibit P10) (**Peacock**). Ms Peacock is also a solicitor in the firm Marque Lawyers, the lawyers for Centrebet.

[11] Subsequent to the hearing, as had been foreshadowed during the hearing, the plaintiff's solicitors filed two more affidavits, which I have marked as Exhibits P11 and P12 respectively:

(a) a further affidavit of Damian Bruce Sturzaker sworn 23 August 2013 (Exhibit P11) (**Sturzaker #2**). It annexed a copy of Northern Territory Government Gazette No.G23 dated 7 June 2006 and the Northern Territory Code of Practice for Responsible Gambling referred to in Gazette No.G23.

(b) a further affidavit of Anthony Terrence Clark sworn 2 September 2013 (Exhibit P12) (**Clark #3**). It refers to the development of an industry-wide code of conduct for gambling and it annexes a draft Code of Practice for Responsible Gambling and a Responsible Gambling Manual, both dated 2003.

[12] The Court convened again on 13 September 2013 so that I could raise a number of questions with counsel, mainly to clarify the nature and extent of the relief sought in this separate trial. On Wednesday 18 September 2013 the Court was advised that the plaintiff is not pressing for a determination of the issues raised in paragraphs 20.4 and 20.5 of the Statement of Claim at this stage. The plaintiff's primary concern at this stage is the negative declaration sought at paragraph 20.3.

Factual Background

Centrebet

[13] Centrebet Pty Limited is a company duly incorporated in Australia.[4] Prior to 30 October 2003 its name was Superodds (Australia) Pty Limited.[5] Between 2003 and 2006 Centrebet was owned by SportsOdds Systems Pty Ltd. SportsOdds Systems Pty Ltd also owned Centrebet UK Limited, which held a permit to operate as a bookmaker in the United Kingdom. In 2006, ownership of both Centrebet and Centrebet UK Ltd (**Centrebet UK)** was transferred to Centrebet International Ltd (**Centrebet International**). By that time, Centrebet International had also incorporated **Centrebet Gaming NV** in Curacao, Netherlands Antilles, which company held an internet gaming sub-licence from the Netherlands Antilles. That occurred on 24 September 2004.[6] Centrebet was acquired by Sportingbet PLC, a United Kingdom entity, on 1 September 2011. However, Centrebet still operates as a separate gambling operator.[7]

[14] Centrebet has been licensed to operate as a sports bookmaker in the Northern Territory since 1992, pursuant to licences granted under the *Racing and Betting Act* 1989 (NT).[8] From late 2003 it operated under a licence issued on 27 October 2003. That licence was replaced by a licence issued

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4 Affidavit of Anthony Terrence Clark, 1 July 2013 [4].
5 Affidavit of Anthony Waller, 3 July 2013 [8].
6 Affidavit of Anthony Terrence Clark, 12 October 2012 [6] – [13].
7 Ibid [14] – [15].
8 Ibid [3].

on 20 February 2008, which licence expires on 30 June 2015.[9] Centrebet began providing betting services by internet using the website www.centrebet.com in 1996.[10]

[15] Prior to its acquisition by Sportingbet PLC (in 2011), Centrebet employed about 200 staff in Australia, and engaged between 10 and 20 people in other countries, to run and administer its operations. In Australia, Centrebet's operations were managed out of two offices – its head office in Sydney, NSW, and its operations centre in Alice Springs, NT.[11]

[16] All of Centrebet's activities were controlled and directed from Australia.[12] Centrebet staff in Australia were responsible for setting odds, processing bets, administering online accounts, processing payment of successful bets, information technology support, marketing and administrative support for all Centrebet International operations including Centrebet, Centrebet UK and Centrebet Gaming NV. Centrebet's customer accounts, and the funds kept in those accounts, were managed by staff in Centrebet in Australia. Bets placed with Centrebet and Centrebet UK were processed through Centrebet's operations centre in Alice Springs.[13]

[17] In order to access and use Centrebet's online gambling services, a person had to first register an account with Centrebet. This was done by either filling out an electronic form through the Centrebet website or by

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9 Ibid [17] – [18].
10 Ibid [3].
11 Ibid[21].
12 Ibid [22] – [24].
13 Ibid [29] – [33].

telephoning Centrebet. In either case, the registration process required the applicant to provide Centrebet with personal information, including his or her name, address and date of birth.[14]

[18] Prior to September 2004 a new customer was required to register a separate account to access to each of the online gambling services of Centrebet and Centrebet UK.[15]

[19] Between September 2004 and June 2008, online registration with Centrebet entitled a user to simultaneous registration with, and access to, all three of Centrebet International's operating entities - Centrebet, Centrebet UK and Centrebet Gaming NV. The customer would determine which Centrebet International entity he or she would transact with by URL. For example, in order to bet with Centrebet the customer would log in through the URL www.centrebet.com; to bet with Centrebet UK the customer would log in through the URL www.centrebet.co.uk; and to play casino games with Centrebet Gaming NV, the customer would be directed to a further site, either www.centrebetcasino.com or www.centrebetpoker.com.[16]

[20] Once registered with Centrebet, a customer would have a Centrebet account. The customer could deposit money into this account, and could also withdraw money from it. If a customer wished to gamble using Centrebet

[14] Ibid [35].
[15] Ibid [36].
[16] Ibid [36] – [37].

Gaming NV, the customer had to transfer funds from his or her Centrebet account to his or her gaming account, and vice versa.[17]

[21] In order to register online after January 2004, a potential customer was required to tick a box on the Centrebet registration page which was adjacent to the following words:

> I acknowledge that I have read and understood all information contained within this website, and that all information provided is correct. By joining Centrebet, and each time I place a bet, I agree to be bound by Centrebet's current rules.[18]

[22] The underlined words "Centrebet's current rules" were hyperlinked to Centrebet's rules at that time.[19]

[23] Mr Clark exhibited a copy of the Centrebet Rules current in May 2004 (**Centrebet Rules**).[20] They included the following:

> 3. Introduction
>
> By joining Centrebet, you have agreed to be bound by these rules, so please take your time to familiarise yourself and keep updated with all Centrebet's rules.
>
> 3.5 Conditions of Placing a Bet
>
> …
>
> Centrebet accepts no liability for any damages or losses arising from, or caused by, its website or site's content, including any person's inability to access the site or any delays in transmission.
>
> 3.8 Rules Binding

[17] Ibid [25] – [26].
[18] Ibid [53] – [56] and exhibit TC-6.
[19] Ibid [54].
[20] Ibid, exhibit TC-7.

By joining Centrebet, and each time you place a bet, you agree to be bound by Centrebet's current rules. If you do not agree to all of the rules, you should not place bets with Centrebet.

Centrebet may make changes to the rules, as we consider appropriate. …

Your continued use of Centrebet's services indicates your acceptance of the current version of the rules from time to time.

3.9 Disputes

Any dispute in relation to a bet should be brought to Centrebet's attention by emailing complaints@centrebet.com. If your dispute has not been resolved by contacting Centrebet, the dispute must be lodged with the Northern Territory Government's Racing Commission within 14 days at the end of the sporting event for which the bet was made. …

The decision of the Racing Commission is final, and binding on both parties.

3.10 Compliance with Legal Requirements

Centrebet does not represent or warrant that Internet betting complies with the legal requirements of any jurisdiction, except those of the Northern Territory of Australia. A person assumes full responsibility for ensuring that the use of Centrebet's services complies with the legal requirements of the relevant jurisdiction from which they are placing a bet.

3.17 Changes of Rules

Centrebet may make changes to the rules as we consider appropriate. Clients should therefore review the rules at regular intervals to stay abreast of any changes. Centrebet will post a notification that the rules have been changed on the site's What's new? page.

3.18 Governing Law and Jurisdiction

This website is governed by and is to be construed in accordance with the laws in force in the Northern Territory of Australia.

Each party irrevocably and unconditionally submits to the jurisdiction of the courts of the Northern Territory of Australia, and any courts, which have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.

[24] In Norway, two betting companies, namely a state owned enterprise Norsk Tipping AS and a private foundation called Rikstoto, have the exclusive rights to offer betting on sports and horse racing. Some Norwegians, including Baasland, preferred to purchase online betting services from betting agents who were licensed outside of Norway, like Centrebet.[21]

Baasland

[25] Bjarte Baasland was born on 5 March 1974. As at 4 March 2013, he was in custody at Ullersmo prison, Krosgrud, Norway. He was serving a sentence of imprisonment of three years and three months following his guilty pleas to two charges of gross fraud on 2 October 2009.

[26] Baasland held an account, no 52782, with Centrebet from May 2000 to May 2005.[22] He used that account to place bets through Centrebet until it was closed by Centrebet on 14 May 2005 due to the fact that Baasland had opened another account, namely account no 171066.[23] It has little relevance for this proceeding except to demonstrate that he had previous experience with internet gambling through Centrebet prior to opening account no 171066.

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[21] Ibid [93] – [96].

[22] Ibid [68] – [73]. Whilst the evidence in [68] is hearsay I consider that it is admissible under s 63 *Evidence (National Uniform Legislation) Act 2011* (**UEA**). Alternatively I would dispense with the application of s 59 UEA under s 190 UEA. I have only used that evidence to conclude that Baasland's previous account was opened in May 2000, which is not a particularly material fact.

[23] Ibid [73].

[27] On 26 May 2004 Baasland accessed the Centrebet website and registered account no 171066 (the **Account**) online.[24] He commenced using that account the same day.[25]

[28] Each sports bet placed by Baasland through the Account was processed in Australia. Deposits made by him in NOK were held in a NOK designated bank or other account (e.g. Moneybookers), and his player account would be automatically adjusted.[26] Any wins or losses were recorded and his player account was adjusted in Australia.[27] Each time Baasland logged onto his Centrebet account he had access to his account balance.[28]

[29] Baasland used the Account to place sports bets with Centrebet and to engage in gaming activities with Centrebet Gaming NV.[29] He also deposited and withdrew money from the Account from time to time.

[30] Between 6 May 2006 and 7 August 2008 Baasland deposited NOK 32,853,820.02 and withdrew NOK 16,691,527.79. His net losses were NOK 15,897,289.60. He bet just over NOK 102 million on sports bets, and won just over NOK 87 million, resulting in a loss of NOK 14,049,178.25. He spent almost NOK 183 million on gaming and won almost NOK 181 million, resulting in a loss of NOK 1,848,111.35.[30] This left a credit balance in his

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[24] Clark, above n 6, [74], [76]; Affidavit of Mark Anderson, 1 July 2013 [4].
[25] Clark, above n 6 [77].
[26] Ibid [97].
[27] Ibid [98].
[28] Ibid [101].
[29] Ibid [77] – [78], exhibit TC-11, exhibit TC-17.
[30] Clark, above n 6, [102] – [103] and TC-17.

account of approximately NOK 2.63,[31] which Centrebet subsequently sent to his Norwegian solicitors.[32]

[31] Between 22 August 2008 and 24 August 2008, Baasland sent a series of emails to Frank Hansen, consultant to Centrebet, advising Centrebet of his gambling problem, advising of adverse media reports about him and his family relating to unpaid loans, requesting money from Centrebet and referring to imminent investigations by the Norwegian police of Baasland's conduct. He sent similar emails to Joachim Klein, at bet365, another company which Baasland had been using for betting services.[33]

[32] In the first of those emails, sent on 22 August 2008, he said to Frank Hansen:

> After some unsuccessful business in the beginning of year 2000, I fled Norway for some time. At the same time I asked my mother if she could help me out by lending me money to pay my debts. She received a large loan from one of Norway's richest families, who are friends of our family. This loan has so far not been disclosed in the media.
>
> Instead of using the money to pay my debts, I used it to try to earn money by wagering at Centrebet. That failed, so I asked my mother for more money.
>
> Our rich family friends did not want to lend us more money, without getting proof of what we wanted to use the money for. Then I asked my mother if she could ask others to obtain loans from. She went on to ask completely normal friends and family members. They lent her money, by using their savings or by pawning their mortgages.
>
> I never provided any false proof to obtain loans. I asked my mother, and she helped me out. This has gone completely crazy. … While everything was going on, I simply couldn't stop.

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[31] Ibid [104], exhibit TC-17.
[32] Affidavit of Kiera Lee Peacock, 30 October 2012, [5] – [6].
[33] Clark, above n 6, [80], exhibit TC-12.

> In today's media reports it is stated that I am charged with a claim of 25 million NOK. The truth is that the amount is even larger.
>
> In total we are talking about 70 million NOK. Centrebet and bet365 have received more than 60 million of this. I have sent a similar email to Joachim Klein at bet365 today.
>
> …
>
> I have told the police that I am willing to be questioned in Norway next week. Probably I will arrive anonymously, in order to avoid the media discovering when I arrived at the airport.
>
> I am ready to spend some years in prison, if have to. But this case is mainly tragic for my family and their friends who have lost huge amounts of money on my addictive gambling.
>
> …
>
> All the money I have borrowed has been gambled over the Internet. … Centrebet and bet365 have received more than 80% of the total. I believe both companies have received more than 25 million NOK each.
>
> …
>
> I appeal to your moral conscience, since you know where the money has come from, and if you are willing to help.
>
> If I have broken the law, I am willing to spend some years in prison, but I really would prefer not to let the entire country know that I have gambling problems. This can be avoided if you are willing to pay some of my debts before next week's interrogation.

[33] Less than 12 hours later, early on Saturday 23 August 2008, Baasland sent another email to each of Hansen and Klein. It said:

> I sent an email to you both earlier today, explaining my situation. I understand this is not a standard enquiry, therefore I do not understand why you haven't replied.
>
> But I want to make this clear:
>
> If you are willing to make a deal with me, this must happen by Wednesday. Then I fly to Norway and will hand over all transactions to the Police and media.

I need to pay back 30 million NOK of my loans, if my creditors, the Police and the media are to calm down. In that case, I won't have to show them all my transactions and the case will calm down.

If you accept this you will probably be able to keep the rest of the money I sent - still a huge amount of money, and not get any more attention from the mentioned parties. But I am dependent on you join forces and pay me back by Wednesday.

If you are not willing to discuss a deal with me:

The police, media and my parents' bankrupt's estate will receive my transactions. The bankrupt's estate includes one of Norway's richest families (Top 5 on public lists). Even though the other families have more normal fortunes, the money has come from my parents' friends. And they are mainly people from elite professions of the Norwegian society. Very powerful people, who all are very frustrated about what's happened.

I believe they will have a good case if they question how you can take my money without hesitating or asking how I can spend so much even though I am listed without any fortune or income.

If you are legally secured and don't have to pay back the money, they will certainly use their resources in the Norwegian society to ban you from the Norwegian market in the entire future. They have large networks throughout the Norwegian society, from the top political elite to other relevant jurisdictions.

If a case is opened, they will follow each single Norwegian Krone that has been sent to your respective companies, or have you thrown out of country very quick.

I am sorry about the situation getting to this. I never had any intention of demanding money back, but since the situation has reached this stage I must deliver all facts and documentation to the police and media.

My opinion is that the best solution for all parties is if I could get some money silently paid back to my account. Then this will not become a case for the media or courts.

Therefore I hope that you can present this to your management very quick.

Bjarte Baasland

[34] Later that day Baasland sent another e-mail to each of Hansen and Klein. It included the following:

> Right now I am seen upon as the bad guy, from the eyes of the Police, media and creditors. This view will change when I tell where all the money has gone. The focus will shift to your companies.
>
> I know that the Police and the creditors will close the case if I can pay back a large amount of money by Wednesday - but this requires at least the amount I mentioned yesterday. Then none of this will reach the media.
>
> If you haven't made a deal with me by Wednesday, you must realise that your time in Norway is over. The bankrupt's estate will go chasing all the money and whether or not they manage to get it back, they will have you thrown out of the country as soon as possible. Then it will be clear which problems your activities create. And they have the resources required to get you out of the country.
>
> … The way this case has become, a deal with me is your only way to secure your existence in Norway. Then you also will be able to keep some of the money.
>
> You can of course take the gamble it is to try to win a legal case, but you will not be able to continue in Norway if this goes public.

[35] This was followed by further emails from Baasland to Hansen making similar demands for an agreement before Baasland was to return to Norway and meet the Police the following Wednesday (27 August 2008).

[36] Mr Clark says, and I accept, that he, and to the best of his knowledge Centrebet, first became aware that Baasland was gambling with money which he may not have been entitled to use on or about 22 August 2008 when he received the first of this series of emails.[34] He says that prior to that, neither he nor to the best of his knowledge anyone else on Centrebet's

[34] Clark, above n 4, [12].

behalf, had received any information which suggested that Baasland was not gambling with his own funds, or that he had any psychiatric or other condition which prevented him from looking after his own interests, or had received any complaint from Baasland in relation to his dealings with Centrebet, including as to the correctness of the accounts which Centrebet had been sending to him from time to time.[35]

[37] Mr Clark immediately took steps to have Baasland's account with Centrebet closed, in light of Centrebet's policies "preventing clients from betting with possibly tainted funds" and "its responsible gambling policy, whereby an account is suspended or closed if a client is identified as having a gambling problem".[36]

[38] Baasland's account was closed on 25 August 2008.[37] The last bet placed using the Account was placed on 7 August 2008.[38]

[39] On 2 October 2009 the Oslo District Court found Baasland guilty on two counts of gross fraud, and he was sentenced to prison for four years. He was also ordered to pay compensation to Cecilie Nustad in the amount of NOK 26,675,000 within two weeks of the service of that judgment. The compensation order related to the second count of gross fraud which related to him having borrowed that money from Cecilie Nustad by false pretences and failing to disclose to her that he would be using the money mainly to

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35 Ibid [17].
36 Ibid [13] – [16].
37 Clark, above n 6, [81].
38 Ibid [79].

gamble on the internet. He appealed to the Borgarting Court of Appeal, which reduced his prison sentence to three years and three months.[39]

The Norway District Court Proceeding against Centrebet

[40] Shortly after 13 November 2008 Centrebet received a letter entitled "Notice of Forthcoming Litigation" from Advokatfirmaet Steenstrup Stordrange DA on behalf of Baasland. The letter foreshadowed legal proceedings against Centrebet for damages by way of a "claim for compensation" based upon "two alternative basis of liability", namely "for negligence or the non-statutory rule of strict liability".[40]

[41] Centrebet responded by letter dated 21 November 2008 from Wiersholm, Mellbye & Bech Advokatfirma AS (where Mr Gulbrandsen was a partner at the time). That response asserted that Centrebet "does not accept the application of Norwegian law and legal venue in this case." It asserted that most of Mr Baasland's activities with Centrebet took place "from his location abroad, in the Czech Republic, and his gains and losses have correspondingly incurred there." The letter went on to say "there is no basis for liability against [Centrebet]" and to explain why this was so.[41]

[42] As already noted, Baasland commenced the Norway District Court Proceeding in the Oslo District Court, Norway on 7 May 2009. He did this

[39] Affidavit of Damian Bruce Sturzaker, 4 July 2013, [21], exhibit DBS-11.
[40] Clark, above n 6 [84] – [85], exhibit TC-13.
[41] Clark, above n 6, [86], exhibit TC-14.

by issuing a Writ of Summons (the **Norway Writ**). He claimed damages plus interest and costs.

[43] The Norway District Court Proceeding is based on two alternative grounds for liability, which seem to be those foreshadowed in the Notice of Forthcoming Litigation. It is alleged that "[t]he company's role and behaviour towards Baasland has, in our opinion, resulted in liability for damages under the non-statutory rule of negligence. Alternatively, it is argued that the company is liable for damages according to the non-statutory rules on strict liability."[42]

[44] The Norway Writ:

(a) alleges that from 2005 to 2008 Baasland lost approximately NOK 60 million on internet betting;

(b) alleges that the money was borrowed from family, friends and acquaintances;

(c) alleges that a substantial part of the amount borrowed was lost in betting arranged by Centrebet;

(d) asserts that the Oslo District Court has jurisdiction to consider the matter and that Norwegian substantive law can be applied, and provides some detail in support of those assertions;

[42] Affidavit of John S. Gulbrandsen, 1 July 2013, exhibit JG2-2 [31].

(e) asserts that "Baasland is a consumer whereas [Centrebet] is an enterprise" within the meaning of the Civil Procedure Act, Norway;[43]

(f) states that "to register as a new player on Centrebet's web pages, the user accepts certain standard terms" which "can be found if a link on the web page is followed";[44]

(g) says that Baasland "turned himself in to the Police in September 2008. A formal complaint has been filed against him for serious fraud in the amount of an NOK 26.6 million since he has used the money for other purposes than the stated loan purpose. He has admitted having committed this criminal offence."[45]

(h) outlines the basis for each of the two causes of action alleged, namely "the non-statutory rule of negligence" and "non-statutory strict liability";[46]

(i) under the subheading "causal connection",[47] contends that:

(i) "there is a causal connection between Centrebet's business, including the company's role and behaviour towards Baasland, and Baasland's financial loss"; and

(ii) "The loss is also a direct consequence of Centrebet's activities. Both the marketing, expansion of maximum limits and bonuses and the company's concrete knowledge of Baasland as a customer and him betting with borrowed money indicate that Centrebet must have known that this would result in a considerable financial loss."

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[43] Ibid exhibit JG2-2 [16].
[44] Ibid exhibit JG2-2 [17].
[45] Ibid exhibit JG2-2 [28].
[46] Ibid exhibit JG2-2 [31] – [39].
[47] Ibid exhibit JG2-2 [40] – [42].

(j) concludes with a Statement of Claim, that includes the assertion that "Centrebet Pty Ltd is liable to pay damages to Bjarte Baasland of an amount determined upon the court's discretion plus interest from the due date and until payment takes place."[48]

[45] Mr Gulbrandsen says[49] that "in summary, and as set out at paragraph 4.3 of [the Norway Writ] Mr Baasland is seeking damages from [Centrebet] under:

(a) the non-statutory rule of negligence, in that 'Centrebet's role and behaviour towards Baasland was negligent and blameworthy, and that this has resulted in Baasland's financial loss'; and

(b) in the alternative, the non-statutory rule on strict liability, in that 'the risk of a loss was constant, typical and extraordinary. In addition it is argued that Centrebet is the closest to carry the liability for Baasland's loss based on a concrete balancing of interests.'"

[46] Mr Gulbrandsen refers to a number of documents filed subsequent to the Norway Writ.[50] He says that on 18 June 2009 Centrebet filed its Reply to the Norway Writ and requested information about it.[51] He says that that request has not been complied with.

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48 Ibid exhibit JG2-2 section 5.
49 Ibid [27].
50 Ibid [7].
51 Ibid exhibit JG2-3.

[47] He says that on 3 July 2009 Baasland filed another document in response to Centrebet's reply.[52] That document does seem to partially answer some of Centrebet's requests and asserts that Centrebet "has acted in a manner giving raise [sic] to liability since April 2006, thus we claim compensation for the loss suffered from that time." It also says:

> … the liability in our view is based on the fact that the company should have intervened and implemented control routines. Baasland had been a customer in the company for years. The company's conduct has in our view given [sic] raise to liability since April 2006, when the turnover increased materially, and the company, in July 2006, received funds directly from the lender without it being checked where the money came from.[53]

[48] Mr Gulbrandsen also refers to other evidentiary material exchanged between the parties.[54] These include:

(a) an overview of transactions between Baasland and Moneybookers, provided by Baasland to Centrebet on 3 July 2009;[55]

(b) a document described as "Baasland's overview of betting", which is a summary prepared by Baasland of his debts and losses on a monthly basis between 2005 and 2008;[56]

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[52] Ibid exhibit JG2-4.

[53] In relation to this assertion counsel for Centrebet referred to what appears to be the only major credit in Baasland's account at that time, namely a deposit of NOK 48,500,000 on 3 July 2006. See Affidavit of Mark Anderson, 1 July 2013 exhibit 5, 48. Under the "description" column of that document appear the words "Bank Transfer: 1". There is nothing to suggest that this refers to a transfer from a third party, or a lender.

[54] Gulbrandsen, above n 42, [8].

[55] Ibid exhibit JG2-5.

[56] Ibid exhibit JG2-6.

(c) a doctor's notice regarding Baasland's affliction with an illness known as DiGeorges syndrome, and an article about the syndrome;[57]

(d) an English translation of Baasland's deposition made before the Oslo District Court on 9 September 2010.[58]

[49] Centrebet challenged the jurisdiction of the Norwegian courts to hear Baasland's claim against it. On 25 November 2009 Judge Gronvik of the Oslo District Court ruled in Centrebet's favour, deciding that the Norwegian courts did not have jurisdiction to hear the dispute.[59]

[50] Baasland appealed this decision to the Borgarting Court of Appeal, and that court dismissed the appeal on 19 March 2010.[60]

[51] Baasland then appealed to the Norway Supreme Court. On 13 October 2010 that court allowed the appeal and decided that the Oslo District Court does have jurisdiction to hear the case. Centrebet was also ordered to pay Baasland's costs.[61]

[52] The question of choice of law was brought back before the Oslo District Court to be decided before the other issues in the proceeding. On 6 August 2012 Judge Gronvik of the Oslo District Court decided that Norwegian law

[57] Ibid exhibit JG2-7, exhibit JG2-8.
[58] Ibid exhibit JG2-9.
[59] Ibid [10], exhibit JG2-10.
[60] Ibid [11], exhibit JG2-11.
[61] Ibid [12], exhibit JG2-12.

was the appropriate law to apply to the dispute. Centrebet was also ordered to pay Baasland's costs in respect of that issue.[62]

[53] On 7 September 2012 Centrebet lodged an appeal against that decision to the Borgarting Court of Appeal.[63] Between then and January 2013 submissions and other documents were filed. As far as I am aware the Court of Appeal has not yet delivered its decision.[64]

[54] If the choice of law issue is finally determined in Baasland's favour, the case will be brought back before the Oslo District Court, to decide the substantive issues of Centrebet's liability, after an oral hearing. The substantive issues have not yet been considered by that court and only limited evidence has been presented thus far. Mr Gulbrandsen estimates that the Oslo District Court will hear the substantive issues before July 2014.[65]

Hillside Proceedings against Baasland in UK

[55] On 2 March 2009, Hillside (New Media) Ltd (**Hillside**), a subsidiary of bet365 Group Limited (**bet365**), instituted proceedings against Baasland in the English High Court (the **Hillside Proceeding**) seeking a negative declaration. On 10 November 2010, Hillside ("the Claimant") applied for summary judgment upon its claim for a negative declaration against Baasland ("the First Defendant"). On 20 December 2010 the High Court made the following declaration:

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62 Ibid exhibit [14], exhibit JG2-13.
63 Ibid [15], exhibit JG2-14.
64 Ibid [16] – [19], exhibit JG2-15.
65 Ibid [21] – [25].

> The Claimant is not liable to the First Defendant or his assignees or any person claiming through or under him in tort or otherwise, for any loss or damage that the First Defendant may have suffered by reason of or arising out of his activities as a customer of the Claimant between January 2005 and August 2008 and / or placing bets or wagers with the Claimant and / or placing any bets or wagers on the website www.bet365.com.[66]

[56] The Reasons for Judgment (of Andrew Smith J) show that the underlying factual basis of that application was very similar to that in the present proceeding. It related to Baasland's online betting between 2005 and 2008 using the bet365 website. During that time Baasland placed over 5000 sports bets, and some 220,000 bets on casino gambling.[67] It seems that the application was brought in response to a series of emails between 22 and 26 August 2008 similar if not identical to those sent to Centrebet and referred to above (at [31] - [35]) and to a "Notice of forthcoming litigation" dated 7 November 2008 from Advokatfirmaet Steenstrup Stordrange DA on behalf of Baasland similar to that sent to Centrebet and referred to above (at [40]).[68]

[57] The initiating process in the Hillside Proceedings was served on Baasland under the Hague Service Convention. Although Baasland provided an address for service and indicated his intention to dispute the jurisdiction of the English High Court he failed to participate in an oral hearing regarding the court's jurisdiction, and his challenge to jurisdiction was dismissed on

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66 *Hillside (New Media) Ltd v Baasland & Ors* [2010] 2 CLCQB 986 ('*Hillside'*).
67 Ibid [5].
68 Ibid [6].

24 February 2010. Hillside served particulars of claim, but Baasland did not serve a defence. Hillside then applied for summary judgment. Baasland did not serve any evidence in response to that application, and his solicitors applied for and obtained leave to be removed from the record. Baasland did not appear and was not represented at the hearing of the summary judgment application.[69]

Joinder of Hillside in the Norway District Court Proceeding

[58] On 10 December 2010 (10 days before Hillside obtained its negative declaration against Baasland) Baasland brought an application in the District Court of Oslo to join Hillside, bet365 International NV and Hillside (Gibraltar) Ltd as parties to the Norway District Court Proceeding already on foot against Centrebet (the **Joinder Application**).[70]

[59] The Joinder Application:

(a) includes assertions against bet365 very similar to those asserted against Centrebet in the Norway Writ;

(b) states that "the preparatory proceedings in the case against Centrebet are far from finished, and the reality of the case is almost unaddressed until now";[71]

[69] Ibid [7].
[70] Clark, above n 6, [91], exhibit TC-16.
[71] Ibid exhibit TC-16, 5, section 2.2.

(c) states that the "criminal proceedings have been tried before both the City Court and the Court of Appeal and Baasland has been found guilty of fraud of NOK 26.6 million, as he has spent the sums borrowed differently than stated when they were lent to him. Baasland has pleaded guilty of [sic] this. A criminal case has been appealed to the Norwegian Supreme Court what [sic] regards the sentence."[72]

(d) alleges two alternative bases of liability, which appear similar to those alleged against Centrebet, namely that "[t]he company's role and actions towards Baasland have in our opinion provoked liability for damages according to the principle of fault (the unwritten rule of negligence). Alternatively, we claim that the company is liable for damages according to the unwritten rules of strict liability."[73]

(e) makes similar allegations under the subheading "causality" to those made against Centrebet;[74]

(f) concludes with a Statement of Claim in terms similar to that of the Norway Writ against Centrebet.[75]

Service and Notification

[60] On 1 November 2012 this court gave the plaintiff leave to serve the Writ filed in these proceedings on the defendant in Norway under or in

[72] Ibid exhibit TC-16, 6, section 3. A copy of the Borgarting Court of Appeal's judgment dated 1 September 2010 is exhibit DBS-11 to Sturzaker, above n 39, [21].
[73] Ibid exhibit TC-16, 8 section 4.3.1.
[74] Ibid exhibit TC-16, 9 section 4.4.
[75] Ibid exhibit TC-16, 9 section 5.

accordance with the Hague Service Convention.[76]

[61] On 14 March 2013 this court received a letter addressed to the Registrar of this court, from Mona Skoien, of Ovre Romerike Tingrett dated 6 March 2013 together with a number of documents, stating that "the documents has [sic] been delivered to Bjarte Baasland the 4 March 2013 at Ullersmo prison, Krogsrud". The documents that accompanied Ms Skoien's letter are those identified in [10](b) above, being part of Exhibit P2.

[62] Mr Gulbrandsen was involved in this process. He refers to and attaches a copy of the Request for Service dated 16 January 2013 (the third document forming part of Exhibit P2).[77] On 7 March 2013 he "requested and received from Ovre Romerike District Court a certified copy of the certificate of service of Mr Baasland (Certificate of Service)."[78] It is the same document as that referred to in paragraph [10](b)(ii) above. He says that "when serving under the Hague Service Convention, the Royal Ministry of Justice and the Police instructs the local District Court to effect service." He also says that the Certificate of Service shows that Baasland was served with the documents enclosed in the Request for Service at 8:30 am on 4 March 2013 at Ullersmo fengsel, avd Krosgrud, 2040 Klofta, Norway.

[63] On 27 June 2013 this court received a further document addressed to the Registrar of this court, signed by Mona Skoien, dated 7 June 2013 and

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[76] The orders were made pursuant to *Supreme Court Rules* r 7.02(2), *Federal Court Rules* r. 10.43(2). Detailed reasons for making the orders were given by Master Luppino on 13 December 2012: *Centrebet Pty Limited v Baasland* [2012] NTSC 100.

[77] Gulbrandsen, above n 42 [30], exhibit JG2-16.

[78] Gulbrandsen, above n 42 [32], exhibit JG2-17.

accompanied by the "Attestation", being the other part of Exhibit P2. The Attestation, also signed by Ms Skoien and dated 7 June 2013, certifies that "in conformity with article 6 of the Convention … the documents referred to in the request have been delivered to" Bjarte Baasland. That document was provided following a request from Mr Gulbrandsen's office. Enquiries initiated by Mr Gulbrandsen indicated that it is not the usual practice of the Norwegian Central Authority to complete and return that document. Rather, it is the usual practice to complete and return to the requesting court the certificate of service, namely the document referred to in [10](b)(ii) above.

[64] Based on his knowledge and understanding of Norwegian law and of the application of the Convention in Norway, Gulbrandsen expresses the opinion that "service on Mr Baasland of the documents contained in the Request for Service has been effective", and that "service on Mr Baasland by the Norwegian Central Authority took place on 4 March 2013."[79]

[65] Further, as previously noted, the Registrar of this court has received two communications from Baasland, each of which refers to the NT Writ and these proceedings. They are Exhibits P1 and P3 in these proceedings. In the first sentence of Exhibit P1 Baasland states: "The writ was served to me 4th of December 2012." Similarly, in the first sentence of Exhibit P3 Baasland states: "The writ was served to me 4th of March 2013."

[79] Gulbrandsen, above n 42, [37].

[66] I find that the NT Writ was duly served upon the defendant Baasland on 4 March 2013, and that he has had a copy of it since sometime before 4 December 2012.

[67] On 24 May 2013 I made orders in relation to the hearing of the separate trial. They included orders that:

(a) evidence in chief at the trial be by affidavit;

(b) the plaintiff file any further affidavits on which it intends to rely by 21 June 2013;

(c) the plaintiff provide its outline of submissions by 28 June 2013; and

(d) the plaintiff use best endeavours to provide the defendant with a copy of the materials referred to above, and with a copy of the orders made that day.

[68] Based on Mr Sturzaker's affidavit dated 4 July 2013 (Exhibit P9) I am satisfied that the plaintiff complied with the court's direction regarding notification. Further, I find that on 3 July 2013 Mr Sturzaker's further letter of 3 July 2013 which included a disc containing documents that Centrebet may rely upon at the hearing of the separate trial, the balance of Centrebet's evidence (apart from Mr Sturzaker's affidavit, and the two affidavits filed

after the hearing on 8 July) and Centrebet's written submissions as at 3 July were delivered to Baasland at the 'halfway house' in Oslo.[80]

[69] At the commencement of the hearing on 8 July, the defendant's name was called and he did not appear.

Potential liability of Centrebet

[70] In order to determine the primary question – namely whether Centrebet has any liability to Baasland under his agreement with Centrebet (the **Contract**) or in relation to its performance - I propose to consider:

(a) What was the contractual arrangement between Centrebet and Baasland?

(b) Whether this court has jurisdiction and if so what law applies in relation to the Contract, and in relation to other causes of action that Baasland might have against Centrebet or vice versa.

(c) Baasland's claims against Centrebet.

(d) Whether Baasland could have a claim against Centrebet in negligence.

(e) Whether Baasland could have a claim against Centrebet in contract, based upon his account with Centrebet.

[80] Sturzaker, above n 39, [14] – [19], exhibit DBS-5 – exhibit DBS-8.

(f) Whether Baasland could have some other kind of claim against Centrebet under the Contract or in relation to Centrebet's performance under the Contract.

The Contract

[71] The Account (no 171066) was opened, and the Contract was created, on 26 May 2004.

[72] Baasland applied to open the Account by accessing the Centrebet website and completing the online registration form. I infer and find that he duly completed the online registration form on 26 May 2004 and followed the procedures discussed above in [17] and [21]. This process involved him providing personal information including his name, address and date of birth. It also involved him ticking a box to acknowledge that he had read and understood all information within the Centrebet registration website, that all information provided by him was correct, and that he agreed to be bound by Centrebet's current rules by joining Centrebet, and each time he placed a bet.

[73] I also find that the Centrebet rules current at that time and at all other material times included those set out in [23] above, and that once the Account was opened a binding contract came into force between Centrebet and Baasland, which included the various terms and conditions contained in those rules.

[74] I note that it does not appear to be disputed by Baasland that he accepted Centrebet's standard terms when he registered to be a player. Indeed in the Norway Writ, which initiated the Norway District Court Proceeding, Baasland referred to his agreement with Centrebet, including the registration process and the various terms which a person accepts when registering, including terms regarding jurisdiction and choice of law.[81]

Jurisdiction and applicable law

[75] The High Court has confirmed the appropriate methodology for the ascertainment of the proper law of a contract in *Akai Pty Ltd v People's Insurance Co Ltd*:[82]

> What is involved is inquiring whether the parties have exercised their liberty to select a governing law is the ascertainment of that which, in truth, the parties are to be taken to have agreed. This may be discerned from a direct statement in a formal written contract. On the other hand, or even in such a case of a formal written contract, it may be necessary to construe the contract as a whole in the manner we have described. In addition, there may be real difficulty in ascertaining, by the drawing of inferences from the evidence, the existence of the express terms of the contract. The terms of the contract may be something to be gleaned from a number of documents, conversations or business dealings over a period of time.
>
> It is not a question of implying a term as to choice of law. Rather it is one of whether, upon the construction of the contract and by the permissible means of construction, the court properly may infer that the parties intended their contract to be governed by reference to a particular system of law. It is in this way that a submission, in the contract, to be exclusive jurisdiction of the tribunals of a particular country, may be taken as an indication of the intention of the parties that the law of that country is to be the proper law of the contract. There is, in truth, only one question here, and that is whether, upon the

[81] Gulbrandsen, above n 42, [16], [17].
[82] (1996) 188 CLR 418.

> proper construction of the contract (which may include an expression of choice in direct language), the court properly may conclude that the parties exercise liberty given by the common law to choose a governing law for their contract. If the answer to this is in the negative, then the law itself will select a proper law.[83]
> [footnotes omitted]

[76] It is clear from clause 3.18 of the Centrebet rules (which was entitled "Governing Laws and Jurisdiction") that Centrebet and each person who opened an account on Centrebet's website have selected the law and jurisdiction of the Northern Territory of Australia as being the appropriate governing law and jurisdiction. This is also apparent from clause 3.10, which makes it clear that Centrebet does not represent or warrant that the internet betting complies with the legal requirements of any other jurisdiction.

[77] Accordingly I conclude that Baasland agreed to this court having jurisdiction, and also that the agreement between him and Centrebet is governed by and to be construed in accordance with the laws in force in the Northern Territory of Australia. (I note of course that questions of jurisdiction and applicable law are separate questions.[84])

[78] Further, in so far as Baasland's claims are based upon conduct by Centrebet that might not be within the scope of clause 3.18 of Centrebet's rules, the relevant law would usually be the lex loci delicti. Most if not all of Centrebet's conduct occurred in the Northern Territory and New South

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[83] Ibid, 441-2.
[84] See for example *John Pfeiffer Pty Ltd v Rogerson* (2000) 203 CLR 503, 521 [25] noted in *Regie Nationale Renault v Zhang* (2002) 210 CLR 491, 499 [10].

Wales. The evidence shows that the computers which received the communications via the internet from the defendant are all based in Australia, specifically in Sydney, as are the bank accounts which held his funds, and that the bets were processed at the operations centre in Alice Springs. [85]

Baasland's claims against Centrebet

[79] Baasland's claims against Centrebet have been defined in the Norway Writ. See discussion above at paragraphs [42] to [46]. The claims have been described in similar terms ever since the first formal demand made in the Notice of Forthcoming Litigation dated 13 November 2008.

[80] In short, the main claim is a claim of negligence. The other claim, said to be an alternative claim, is said to be based on a "non-statutory rule of strict liability".

[81] The negligence claim has been described at some length in the various court documents. It seems to rely on elements similar to those in a negligence claim in Australia – in particular duty of care, breach, causation and damage. I shall discuss this later under the sub-heading "negligence, duty of care and causation".

[82] However, the alternative claim of "non-statutory strict liability" does not seem to be very well explained and seems somewhat vague. This could be

[85] See for example [14] – [16] above.

because there is no such claim (as Centrebet's lawyers have asserted in [4.1.2] of Centrebet's Reply to the Norway Writ).[86] Even if there was such a remedy in Norway, I am not aware of, and very much doubt that there is any such or analogous cause of action available in Australia – ie some kind of strict liability under the common law for the kind of conduct complained of by Baasland.

[83] Further, it was claims of these kinds that were the focus of the application for, and the granting of, the negative declaration in the Hillside Proceeding. Indeed, although the Notice of Forthcoming Litigation document and the background emails and other demands were virtually identical to those in the present matter, no proceedings had been commenced against Hillside or bet365 when Hillside applied for the negative declaration. Nevertheless the claims made were evidently considered sufficiently described for the court to make the declaration sought.

[84] For the purposes of considering Centrebet's application for a negative declaration, it is also necessary for me to consider what if any other possible causes of action might be available to Baasland were he to sue Centrebet in Australia under the Contract or in relation to its performance.

[85] In this regard I note that in the Norway District Court Proceeding:

(a) Baasland does not allege that Centrebet:

[86] Gulbrandsen, above n 42, exhibit JG2-3

(i) owes him any money on his account with Centrebet;

(ii) has breached any term of the Contract or the terms of its licence or the Responsible Gambling Code; or

(iii) is otherwise liable in relation to its performance of the Contract.

(b) it is not suggested that Centrebet had any actual knowledge that Baasland was a problem gambler who was gambling beyond his means, let alone that there was any indication by Centrebet that it would act to protect Baasland from himself;[87]

[86] However it is alleged that Centrebet knew that Baasland was using "borrowed money" to gamble.[88] But:

(i) as far as I am aware, Baasland has not provided any particulars or evidence to support this allegation, despite Centrebet having requested such information;

(ii) Centrebet denies the allegation;

(iii) in any event, it is not alleged that Centrebet had any basis for knowing that the lenders had been tricked into providing the funds and/or that the lenders were not aware that Baasland was using the funds to gamble and that this was contrary to the terms of the loans.

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[87] Cf *Calvert v William Hill Credit Limited* [2008] EWCH 454 (ChD), [175]-[187].
[88] Gulbrandsen, above n 42, exhibit JG2-2 [34].

[87] Otherwise, Baasland's allegations appear to be based on marketing activities which were targeted at Baasland to encourage him to gamble.

Negligence, duty of care and causation

[88] As with the United Kingdom, the position in Australia is that, prima facie, gamblers are not owed fiduciary type duties or duties of care by the companies with which they choose to place their bets, to prevent them from continuing to bet or otherwise to protect their interests.[89]

[89] This was emphatically affirmed by the High Court of Australia in *Kakavas v Crown Melbourne Ltd and Others* in June this year.[90] That matter concerned a "high roller" who lost a large amount of money gambling at a casino. He too had been encouraged to continue gambling, including by being provided with incentives such as rebates on losses and offers of transport on Crown's corporate jet. He too asserted that he suffered from a pathological addiction to gambling. Moreover, he was already known by Crown and others to be a problem gambler. Although the cause of action considered by the High Court was one based upon unconscionable conduct, their Honours' reasoning also leads to the conclusion that there would not have been a duty of care owed to the gambler that could have led to a successful negligence claim.[91]

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[89] *Kakavas v Crown Melbourne Limited* [2013] HCA 25, [18]-[38]; *Reynolds v Katoomba RSL All Services Club Ltd* (2001) 53 NSWLR 43; *Foroughi v Star City Pty Ltd* (2007) 163 FCR 131; *Calvert v William Hill Credit Limited* [2008] EWCH 454 (ChD); *Calvert v William Hill Credit Limited* [2009] Ch 330 (CA).

[90] [2013] HCA 25.

[91] See above especially [20] – [21], [25] – [31].

[90] Their Honours also noted the potential difficulty in establishing legal causation for Kakavas' losses, which arose from the fact that he had chosen to gamble and he did not have the benefit of a finding that he would have avoided his gambling losses by not gambling with Crown.[92]

[91] There is nothing in the evidence or other materials before me, in particular in the emails and other correspondence leading up to the commencement of the Norway District Court Proceedings, in the Norway Writ, or in Baasland's written responses to the NT Writ that could form the basis of any relevant duty of care owed by Centrebet to Baasland.

[92] Moreover, I do not consider that Baasland can establish causation. He chose to embark upon and to continue his betting and gambling activities, and did so not only with Centrebet but also others. Had he gambled with someone else instead of Centrebet he may well have suffered the same losses.

[93] He says that he lost about NOK 70 million altogether and that Centrebet and bet365 have been the beneficiaries of more than 80% of his total spending on internet gambling. The Hillside Proceedings related to Baasland's extensive gambling with bet365 and its associated companies, and resulted in the finding that bet365 was not liable to Baasland in any way.[93]

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92 Cf above [33] – [35].
93 *Hillside*, above n 66.

Claim based on account for monies due and owing

[94] The evidence included copies of ledgers and other accounts showing transactions and moneys passing from and to Baasland in relation to those transactions.[94]

[95] Mr Anderson conducted a search of Centrebet's client business records for the transactions made on Baasland's account number 171066. He located two journals for that account:

(a) a journal described as the "Centaur Account Journal" (Annexure MA-5 to his affidavit (Exhibit P7), which records transactions made between 3 May 2006 and 9 May 2007; and

(b) a journal described as the "Openbet Account Journal" (Annexure MA-6 to his affidavit (Exhibit P7), which records transactions made between 8 May 2007 and 7 August 2008 (when he placed his last bet).

[96] The reason for there being two journals was that Centrebet's record keeping systems changed from Centaur to Openbet on 9 May 2007. This involved a change in the manner in which client transactions were recorded.[95] Mr Anderson swears, and I find, that those records are true records of the transactions made under Baasland's account 171066.[96]

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[94] Affidavit of Mark Anderson, 1 July 2013 exhibit MA-5, MA-6; Clark, above n 6, exhibit TC-11, exhibit TC-17.
[95] Affidavit of Mark Anderson, 1 July 2013 [13] – [15].
[96] Ibid [17].

[97] Each of the journals contain a lot of detail, which is explained in paragraphs 14 and 15 of Mr Anderson's affidavit.

[98] The first entry on the Centaur Account Journal records a “Deposit from Moneybookers” on 3 May 2006 of NOK 70,000. The same entry shows his account balance to be NOK 70,000.12, an exchange rate of 0.2177, the amount in Australian dollars ($15,239) and other detail, including account ID, transaction ID, centaur bet ID. The next entry, also dated 3 May 2006, shows a withdrawal of NOK 15,000 for a “bet”. Under the description column appear words including “bet accepted - Multi-bet. Basketball; NBA Playoffs Tuesday 2/5 - Sacramento Kings at San Antonio Spurs: Sacramento Kings at 1.91”. The Account balance is shown to be NOK 55,000.12 as a result of that transaction.

[99] Most of the transactions recorded in the Centaur Account Journal are recorded under the “transaction key” column as a “bet”, “payout”, “adjustment” or “settlement”:

(a) Where the transaction is recorded to be a “bet” the corresponding entry under the description column is a description of the bet somewhat similar to that quoted above.

(b) Where the transaction is recorded to be a “payout” the corresponding entry under the description column includes the words “bet paid out" rather than “bet accepted”;

(c) Where the transaction is recorded to be an "adjustment" the corresponding entry under the description column is usually "Transfer to Poker Room". These relate to gaming activities on the Centrebet Gaming NV website.

(d) Where the transaction is recorded to be "settlement" the corresponding entry under the description column is usually "Moneybookers ID: bjarteb@online.no". There were also three entries on 7 May 2006 marked as "settlement" which total NOK 1,500,000 where the entry under the description column is "Gjensidige NOR Sparebank Bjart Baasland A/C 15901338318".

(e) There are also a large number of transactions shown as "Deposit from Moneybookers".

[100] This indicates to me that in addition to placing bets through Centrebet and gaming on the Centrebet Gaming NV website Baasland was also transferring money in and out of the Account from time to time, primarily through Moneybookers.

[101] The last entry on the Centaur Account Journal shows an adjustment on 9 May 2007 of NOK 150,000. Under the description column appear the words "transfer: to new Centrebet balance migration."

[102] The Openbet Account Journal (Annexure MA-6) has less columns. The first entry refers to a "manual adjustment" of NOK 150,000 on 8 May 2007. The

next seven entries are deposits from Moneybookers. Then appear numerous transactions including “bet stake”, “bet returns”, “external system transfer out of Openbet” and “external system transfer refund”. As with the Centaur Account Journal this journal contains a column that shows a running balance. The last entry, dated 7 August 2008, records a bet stake of NOK 250, resulting in a balance of zero.

[103] Exhibit TC-11 to Mr Clark's affidavit (Exhibit P4) is another document comprising over 200 pages, which lists bets placed by Baasland and the payouts on those bets between 6 May 2006 and 7 August 2008. The document also contains a description of each bet, shows the value of each bet, the value of any payout, the value of any bonuses paid, as well as his accumulated wins or losses.[97]

[104] As I explained in more detail in [30] above these amounts are summarised in Exhibit TC-17 to Mr Clark's affidavit (Exhibit P4). Mr Anderson says that the table in Exhibit TC-17 is an accurate reflection of, and was derived from, the transactions recorded in the Centaur Account Journal and the Openbet Account Journal.

[105] Mr Anderson also refers to information that he received from Mr Gavin Goh of Sportingbet regarding 2.57 NOK that was found in Baasland’s “Playtech wallet” in October 2011. It seems that this was not discovered earlier, and thus not reflected in the Openbet Account Journal closing balance, because

[97] Clark, above n 6, [78].

"the Openbet system does not reach into the Playtech system to retrieve the balance in the Playtech wallet." Although I'm not sure what this means, the evidence is that a cheque for NOK 2.63 was sent to Baasland's Norwegian solicitors with a covering letter dated 12 October 2012.[98]

[106] I am satisfied that there is no money owing to Baasland based upon the Account set up under the agreement between them.

[107] Further, I note that there has been no suggestion by Baasland that the accounts and ledgers are inaccurate, and as far as I am aware he has not asserted that any money is owing to him in relation to his account with Centrebet. He has had access to his account throughout the relevant period and can be taken to have agreed with it.[99]

[108] Accordingly I find that no funds are owing by Centrebet to Baasland from the Account (171066). All funds paid into the Account by Baasland and all of his winnings and other credits have been either:

(a) used for gambling with Centrebet which was unsuccessful and therefore properly debited from (or not re-credited to) the Account by Centrebet; or

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[98] Peacock, above n 32, [5] - [6], exhibit KP2-2. Whilst the evidence in [5] and [6] is hearsay I consider that it is admissible under s 63 UEA. Alternatively I would dispense with the application of s 59 UEA under s 190 UEA. I have only used that evidence to assist me to interpret what is contained in Annexure KP-2 and to conclude that it and the accompanying cheque were sent to Baasland's Norwegian solicitors.

[99] *Nicvira Nominees Pty Ltd & Ors v Humich Nominees Pty Ltd & Ors* [2001] WASC 243, [32]-[38].

(b) transferred from the Account to an account with Centrebet Gaming NV and used for gambling with Centrebet Gaming NV which was unsuccessful and therefore properly not re-credited to the Account by Centrebet; or

(c) withdrawn from the Account by Baasland or otherwise repaid to him by Centrebet

in accordance with the terms of the Contract.

Other claims in contract or otherwise

[109] Clause 3.5 of the Centrebet rules purports to exempt Centrebet from liability for any damages or losses arising from or caused by its website or its content. Clause 3.10 contains an express provision to the effect that Centrebet is only responsible for compliance with the legal requirements of the Northern Territory of Australia, and clearly places responsibility upon the gambler to ensure that his use of Centrebet's services complies with the legal requirements of any other jurisdiction from which the gambler places his bet.

[110] Accordingly, and subject of course to any statutory provisions to the contrary which are binding upon Centrebet (such as the TPA) Centrebet cannot be held liable to Baasland in Australia for non-compliance with the legal requirements of another jurisdiction, such as Norway.

[111] I note too that Baasland may have difficulty suing in Australia insofar as he would be relying on his own fraud as a basis for a claim against Centrebet, in contract at least, on account of the principle of *ex turpi causa non oritur actio*.[100] This may be a defence open to Centrebet that would not be available to it in Norway.

Negative declaration

[112] The power of superior courts to grant declaratory relief, whether or not any consequential relief is or could be claimed, is well established. In addition to the statutory power conferred, for example under s 18 of the *Supreme Court Act 1979* (NT), superior courts have inherent power to grant such relief.[101]

[113] The jurisdiction to make a declaration is "a very wide one".[102] Generally, before a court exercises its jurisdiction in favour of making a declaration it needs to be satisfied, first, that the question before it is a real and not a hypothetical question; secondly, that the person raising it has a real interest to raise it; and thirdly, that that person is able to secure a proper contradictor, that is, someone presently existing who has a true interest to oppose the declaration sought.[103]

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[100] *Stone & Rolls Ltd v Moore Stephens* [2009] 1 AC 1391.
[101] *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 581.
[102] *Forster v Jododex Australia Pty Ltd* (1972) 127 CLR 435 (Gibbs J).
[103] Ibid, 437 referring to *Russian Commercial and Industrial Bank v British Bank for Foreign Trade Ltd* [1921] 2 AC 438, 448.

[114] A negative declaration is, in effect, a declaration that the defendant has no right against the plaintiff. This may be because the defendant has no cause of action against the plaintiff, or because the plaintiff has a defence to a cause of action the defendant has against the plaintiff.[104]

[115] In the early 1900s the High Court displayed some reluctance to the granting of negative declarations, largely because many claims were based on facts which were purely hypothetical. However, in more recent years, the High Court has expressed a greater willingness to allow negative declarations even in respect of conduct which has not yet taken place. Referring to the jurisdiction to make a declaratory order without consequential relief Barwick J said in *Commonwealth v. Sterling Nicholas Duty Free Pty Ltd*:[105]

> Of its nature, the jurisdiction includes the power to declare that conduct which has not yet taken place will not be in breach of a contract or a law. Indeed, it is that capacity which contributes enormously to the utility of the jurisdiction.

[116] In *Hume v Monro (No 2)*[106] Latham CJ said at 474:

> In an action for a declaration that a right alleged to be claimed by the defendant does not exist the onus rests upon the plaintiff of establishing first that a claim sufficiently definite and intelligible in its terms to be a proper subject of adjudication has been made against him by the defendant. … Next, the plaintiff seeking a declaration denying any possible foundation for the alleged claim of right must exhaust the possibilities and show that the claim cannot possibly be supported. It is

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[104] DR Williams, 'The Form and Effect of Declaratory Relief and the Negative Declaration' in Kanaga Dharmananda and Anthony Papamatheos (eds), *Perspectives on Declaratory Relief*, (Federation Press, 2009) 100, 112 referring to Mark Leeming 'The Negative Declaration in Australian and United States Federal Courts' (2004) 12 *Australian Journal of Administrative Law* 55, 56.

[105] (1972) 126 CLR 297, 305.

[106] *Hume v Monro (No. 2)* (1943) 67 CLR 461.

> not for the defendant in such a proceeding to make a claim and to justify that claim.

[117] The first part of that passage is consistent with the first of the three requirements identified by Gibbs CJ in *Forster v Jododex Australia Pty Ltd* and in other cases concerning declarations in Australia and the United Kingdom, namely, the requirement that the question before the court is a real question which can be adequately defined.

[118] That requirement will usually be readily satisfied where, as here, a claim has actually been made and articulated by the proposed defendant. In the present matter, the defendant's claim has been set out in the Norway Writ, which I have already discussed at some length. Accordingly, I find that the first requirement has been met.

[119] The second requirement referred to by Gibbs CJ, namely that the person raising the question must have a “real interest to raise it" raises questions about the utility of the relief sought. It is often this aspect which requires careful scrutiny before the declaration is granted. For example, care must be taken to ensure that the plaintiff is not simply engaging in forum shopping.[107]

[107] See for example *Saipem SpA v Dredging VO2 BV and Geosite Surveys Ltd (The Volvox Hollandia)* [1998] 2 Lloyds Rep 361.

[120] In paragraph 4-167 of the chapter entitled 'Negative Declarations' in *The Declaratory Judgment*[108] the learned authors say, in relation to the United Kingdom:

> The courts in this country will also be astute not to allow a claimant to obtain a jurisdictional advantage by commencing proceedings in this country for a negative declaration when it would be more appropriate for the proceedings to be brought by the defendant who would prefer to litigate abroad and in due course would do so. This is particularly true if the declaration will perform no useful purpose. However, the High Court had jurisdiction under the former RSC Ord.11 to grant leave to serve proceedings outside the jurisdiction for a negative declaration. Provided it considered that the claimant was acting reasonably in commencing proceedings, the Court permitted such proceedings when it was an appropriate jurisdiction to determine the matter. This was especially the position if an international convention which governed the proceedings made the High Court the only or most appropriate jurisdiction for commencing the proceedings, <u>if the dispute relates to matters governed by English law</u>, <u>or</u> <u>there has been an agreement that the English courts should have exclusive jurisdiction</u>. The court would also be more receptive to granting relief if it considered that it would enable a consistent resolution of disputes between a number of parties. One of the benefits of the flexible nature of declarations is that they may assist a court co-operative resolution of trans-national disputes where issues are being determined by courts in a number of different jurisdictions. It was less receptive, when this was not possible because the matter was already being litigated in other jurisdictions. [emphasis added, footnotes omitted]

[121] The learned authors proceed to quote from Lord Woolf MR in *Messier-Dowty Ltd and Anor v Sabena SA and Ors*:[109]

> The approach is pragmatic. It is not a matter of jurisdiction. It is a matter of discretion. The deployment of negative declarations should be scrutinised and their use rejected where it would serve no useful purpose. However, where a negative declaration would help to ensure that the aims of justice are achieved the courts should not be reluctant

[108] Lord Woolf and Jeremy Woolf, *The Declaratory Judgment*, (Sweet and Maxwell, 4th ed, 2011).
[109] [2001] 1 All ER 275, 285-286 [41] – [42].

> to grant such declarations. They can and do assist in achieving justice.[110]

[122] They continue:

> The *Sabena* decision was followed in *Bhatia Shipping v Alcobex Metals Ltd*. In that case the court considered that England was the proper forum for resolving the dispute and considered that it was appropriate to grant the claimant a declaration that it was not liable to make payments to the defendant on account of a limitation defence.[111] [emphasis added]

[123] The authors proceed to point out that the court will weigh the interests of the parties. This will include the interests of a person against whom a claim has been made in removing the "cloud upon the [claimant's] rights, a cloud which endangers his peace of mind, his freedom, his pecuniary interests."[112]

[124] The learned authors also note that:

> A declaration will normally make the issue res judicata, so as to prevent the defendant from subsequently bringing an action to vindicate a right denied to him by the declaration. It is the res judicata implications of granting a declaration which make it important that a court should not grant the relief if there is any danger of the dispute not being fully contested in the proceedings.[113]

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[110] Lord Woolf and Jeremy Woolf, above n 109, [4-172].
[111] Ibid [4-172].
[112] Ibid [4-163] quoting from Edwin Borchard *Declaratory Judgments* (Banks-Baldwin Law Publishing Co., 2nd ed, 1941), 20. In similar vein see *Greenwich Healthcare National Health Trust Service v London and Quadrant Housing Trust and Ors* [1998] 1 WLR 1749, 1756 where Lightman J refers to a plaintiff wishing to avoid "a period of damaging (or indeed paralysing) uncertainty", "to expedite trials", "to dispel uncertainties and remove obstacles to progress and legitimate activities" and "clearing his own title".
[113] Lord Woolf and Jeremy Woolf, above n 109, [4-182].

[125] The present matter involves a number of unusual features, some of which suggest that the negative declaration should not be made. The main circumstances in that regard are the fact that Baasland has already commenced proceedings in Norway, and has not participated in any way in the hearing of the separate trial apart from sending to the court the documents comprising Exhibits P1 and P3.

[126] On the other hand, he has commenced those proceedings despite his express agreement to this court having jurisdiction and to Northern Territory law applying. Further, for reasons expressed above, I consider that the claims that he has brought in Norway would have no merit if brought in the Northern Territory and would be dismissed. Moreover, even though he began the Norway District Court Proceedings in May 2009, very little if any progress has been made in relation to hearing the merits of that claim.

[127] Apart from the fact that when Hillside applied for the negative declaration in the Hillside Proceedings Baasland had not actually commenced proceedings against Hillside,[114] the facts and circumstances of the two matters are virtually identical. Per Andrew Smith J in *Hillside*:

> 54. Whatever may be the position under Norwegian law, Mr Baasland would not under English law have a claim on the basis of some strict liability such as Steenstrup Stordrange assert. The only possible basis of a claim in tort would be one in negligence.
>
> …

[114] Note however that Baasland had applied to join the Hillside / bet365 companies in the Norway District Court Proceedings before the declaration was actually made (albeit only 10 days before).

> 56. I conclude that Mr Baasland has no real prospect of defeating Hillside's contention that they are under no liability in tort or otherwise for any loss or damage that he might have suffered. I accept that it is right to make the declaration that they seek. In view of the threatened proceedings, Hillside are understandably and reasonably concerned that they might otherwise face litigation in the future, and they are entitled, to my mind, to establish their legal position.
>
> 57. There is no compelling reason this matter should go to trial. I consider that Hillside should be granted, the summary judgment that they seek. I recognize that they could, had they seen fit, have applied for judgment in default of defence, but they preferred to seek summary judgment because they believe that it might be given more recognition in other jurisdictions than a judgment in default of pleadings. I do not know whether they are right in that belief, but that is no reason that the court should refuse the application.
>
> 58. I therefore grant Hillside's application for summary judgment.

[128] It follows from what I have said above, and I conclude, that:

(a) neither of the causes of action relied upon in the Norway proceedings, namely negligence and "non-statutory strict liability", would succeed if brought in the Northern Territory or under the laws of the Northern Territory;

(b) there is no money owing to Baasland under the Account or otherwise under the Contract; and

(c) Centrebet has no liability to Baasland under the Contract or in relation to its performance.

[129] In substance, Centrebet seeks the same relief as was granted by the English High Court of Justice against Baasland in favour of bet365 in the Hillside Proceedings.[115]

[130] Likewise, in the present matter, I consider that the interests of justice are such that I should exercise the jurisdiction to make an appropriate declaration.

[131] Before doing so however I propose to consider and decide whether this proceeding should be stayed.

Stay of this proceeding

[132] Although the defendant has not entered an appearance in this proceeding, and has not made an application for a stay in the manner required in the *Supreme Court Rules*, I propose to treat Baasland's request in his "Response to the Writ" dated 11 March 2013 (Exhibit P3), which is similar to his four page letter of 20 December 2012 (Exhibit P1), as an application for a stay of these proceedings including the separate trial.

[133] In Exhibit P3 Baasland said that he cannot engage Australian lawyers to represent him and that this court "should stay the proceedings … based on the principles of the forum non conveniens doctrine as the Supreme Court of Northern Territory in this case must be seen as a clearly inappropriate forum." He cited and quoted from a number of decisions of the High Court

[115] *Hillside,* above n 66.

of Australia, including *Voth v Manildra Flour Mills Pty Ltd*,[116] *Henry v Henry*,[117] *CSR Ltd v Cigna Insurance Australia Ltd*[118] and *Union Steamship Co of New Zealand v The Caradale*.[119]

[134] He said that:

(a) in the Norway District Court Proceeding

(i) he is "claiming damages from Centrebet in tort";

(ii) his claims are "directly linked to [his] status as a customer of Centrebet";

(b) "the subject matter of the [Norway] case is in principle the same as the claims set out by Centrebet" in the present proceeding; and

(c) "the [Norway] case is still pending before Norwegian courts".

[135] He also referred to the decision of the Norway Supreme Court regarding jurisdiction of Norway's courts, and to the fact that the Oslo District Court has determined that it can apply Norwegian law. He referred to principles of comity between courts. He also alleged an inequality between him and Centrebet which would make the Northern Territory proceedings oppressive or vexatious. He also said that his extensive gambling activity was a result

[116] (1990) 171 CLR 538 (*'Voth'*).
[117] (1996) 185 CLR 571 (*'Henry'*).
[118] (1997) 189 CLR 345.
[119] (1937) 56 CLR 277.

of his compulsive gambling problem, and that because he was in prison he was not able to defend himself before an Australian court.

[136] In response to the latter contentions Centrebet points to the fact that Baasland has apparently been able to pursue the litigation in Norway notwithstanding his impecuniosity and his incarceration, and has apparently had the assistance of a lawyer with extensive knowledge of Australian law in helping to formulate the detailed submissions contained in his letter of 20 December 2012 (Exhibit P1) and in the Response to the Writ of 11 March 2013 (Exhibit P3).

[137] Centrebet also submits that Baasland, like any person seeking to have a proceeding stayed, could and should have verified his application for a stay by swearing an affidavit in support of it.

[138] Counsel referred to what was said by the High Court in *Regie Nationale Renault v Zhang*[120] in relation to an action commenced in New South Wales for injuries sustained in New Caledonia. The plurality said at 521 [78]:

> It [is] not a question of striking a balance between competing considerations. Rather, it was the task of the [applicant for a stay] to demonstrate that a trial in New South Wales would be productive of injustice, because it would be oppressive in the sense of seriously and unfairly burdensome, prejudicial or damaging, or vexatious, in the sense of productive of serious and unjustifiable trouble and harassment.

[120] (2002) 210 CLR 491 ('*Zhang*').

[139] Centrebet submits that a plaintiff who properly invokes the court's jurisdiction has a prima facie right to have its claim heard and that a stay should only be granted with extreme caution.[121]

[140] Centrebet also submits that the existence of simultaneous proceedings alone does not establish that the subsequent action is vexatious. It must be shown that there is no legitimate interest, advantage or point in the subsequent proceedings.[122]

[141] Counsel for the plaintiff set out a number of contentions as to why there is legitimate interest, advantage or point in this proceeding.

[142] First, Centrebet contended that a judgment in the Norwegian proceedings will not be enforced in Australia, because:

(a) Norway is not a nation whose courts have been listed in the schedule to the *Foreign Judgments Regulations 1992* (Cth); and

(b) it would not be enforced at common law.

[143] In relation to enforceability at common law, Centrebet contended that Baasland would need to show that Centrebet fell within one of the five categories referred to by Buckley LJ in *Emanuel v Symon*.[123] It submitted that the only possible category would be category (2) but that this would not apply because Centrebet did not have an office in Norway and Baasland was

[121] *Global Partners Fund Ltd v Babcock & Brown* Ltd (2010) 267 ALR 144, [142]-[143].
[122] *Henry*, above n 119, 591; *TS Productions LLC v Drew Pictures Pty Ltd* (2008) 172 FCR 433, [33], [50]; *Sunland Waterfront (BVI) Ltd v Prudential Investments Pty* Ltd [2012] VSC 1, [14]-[21].
[123] [1907] 1 KN 302 ('*Emanuel*'), 309.

not in Norway on most occasions when he was betting on Centrebet's website.

[144] Centrebet contended that the lack of enforceability of a decision of a foreign court is usually a complete answer to an application for a stay based on parallel proceedings overseas.[124]

[145] Second, Centrebet relies on the fact that Baasland has agreed that this court has jurisdiction. It points out that by registering and operating his account with Centrebet Baasland has agreed to "irrevocably and unconditionally" submit to the jurisdiction of this court and has waived any right to object.[125]

[146] Third, Centrebet submits that the unavailability of its claim under the TPA is a significant factor.[126]

[147] Fourth, Centrebet contends that the strongest connection is with the Northern Territory and Australia: "It seems that over the most relevant period – 2006 to 2008 – Baasland resided in Czech Republic and Germany. It appears that his only connection with Norway is that he is Norwegian, had a flat in Oslo and, unbeknownst to Centrebet, had borrowed money to fund his gambling from people who might be residents of Norway. Given that Centrebet is a NT company and licensed to carry on its business under NT law, the contract is governed by NT law with a non-exclusive but

[124] *Henry*, above n 119, 592.
[125] Centrebet Rules r 3.18.
[126] *Commonwealth Bank v White* [1999] 2 VR 681 at [89]; *Leigh-Mardon Pty Ltd v PRC Inc* (1993) 44 FCR 88, 105, 108.

irrevocable submission to jurisdiction, and that the computers and accounts were all in Australia, the strongest connection is with Australia."

[148] Fifth, Centrebet contended that the proceedings in Norway are not significantly advanced. "The proceedings have only reached the stage of a determination of applicable law and a trial has not been listed."

[149] As pointed out by Finkelstein J in *TS Production LLC v Drew Pictures*[127] the High Court of Australia has adopted a different and stricter approach to that in England in relation to applications for a stay of proceedings brought in an Australian court. See *Oceanic Sun Line Special Shipping Company Inc v Fay*[128] per Brennan J at 232-241, Deane J at 241-255 and Gaudron J at 261-266.

[150] At 241-242 Deane J said:

> A party who has regularly invoked the jurisdiction of a competent court has a prima facie right to insist upon its exercise and to have his claim heard and determined. That prima facie right to the exercise of competent jurisdiction which has been regularly invoked can be displaced by statute … The common law itself has traditionally recognized certain special categories of case in which the exercise of jurisdiction must or may be refused in circumstances where diplomatic custom, international comity, public policy or considerations of justice require or may support that course. In this country, those special categories of case have not traditionally encompassed a general judicial discretion to dismiss or stay proceedings in a case within jurisdiction merely on the ground that the local court is persuaded that some tribunal in another country would be a more appropriate forum.
>
> …

[127] (2008) 172 FCR 433, [13].
[128] (1988) 165 CLR 197 ('*Oceanic Sun Line*').

> The general (or traditional) approach which emerges from *Maritime Insurance Co.* is that the power of a court whose jurisdiction has been regularly invoked to dismiss or stay proceedings on the ground that they should have been brought in some tribunal in another country is limited to the case where the court is persuaded that it is such an unsuitable or inappropriate forum for their determination that their continuance would work a serious injustice in that it would be oppressive and vexatious to the defendant. On the traditional approach, the clear inappropriateness of the local forum may justify dismissal or a stay. The mere fact that some foreign tribunals would represent a "more appropriate" forum will not.

[151] His Honour proceeded to point out that it would be impracticable to seek to identify in advance every set of possible circumstances which the words "vexatious" and "oppressive" may denote. However, he went onto say, at 243:

> For the moment, it suffices to note that the use of those words serves the purpose of emphasising that the traditional process of determining such an application for the dismissal or stay of an action is not a mere balancing of convenience or inconvenience or the resolution of competing claims of different jurisdictions neither of which could be said to be clearly inappropriate … The starting point of the determination of such an application in accordance with traditional principle must be the prima facie right of a plaintiff to insist upon the exercise of competent jurisdiction which he has regularly invoked. That prima facie right of a plaintiff is not to be lightly displaced or denied.

[152] At 244 Deane J agreed that the jurisdiction pursuant to which a proceeding can be dismissed or stayed is one which should be exercised "with great care" or "extreme caution". He added:

> It has … traditionally been seen as a jurisdiction which is only available to be exercised on inappropriate forum grounds where the court whose jurisdiction has been invoked by the plaintiff is so

> inappropriate for the determination that a continuance of the proceedings in it would be productive of the injustice of oppression and vexation of the defendant.

[153] Deane J summarised his view of the traditional principles governing the power of an Australian court to order that proceedings which have been regularly instituted within jurisdiction be dismissed or stayed on inappropriate forum grounds at 247-8. He said:

> The power should only be exercised in a clear case and the onus lies upon the defendant to satisfy the local court in which the particular proceedings have been instituted that it is so inappropriate a forum for their determination that the continuation would be oppressive and vexatious to him. Ordinarily, a defendant will be unable to discharge that onus unless he can identify some appropriate foreign tribunal to whose jurisdiction the defendant is amenable and which would entertain the particular proceedings at the suit of the plaintiff. Otherwise, that onus will ordinarily be discharged by a defendant who applies promptly for a stay or dismissal if he persuades the local court that, having regard to the circumstances of the particular case and the availability of the foreign tribunal, it is a clearly inappropriate forum for the termination of the dispute between the parties.

[154] His Honour proceeded to indicate why the English approach should not be followed. At 252 he said:

> It is a basic tenet of our jurisprudence that, where jurisdiction exists, access to the courts is a right. It is not a privilege which can be withdrawn otherwise than in clearly defined circumstances. … A broader forum non conveniens discretion to dismiss proceedings within jurisdiction if it appears that some foreign tribunal is or clearly is a more appropriate forum cannot, in my view, be readily accommodated in any of the established principled qualifications of that basic tenet.

[155] The most recent High Court authority regarding stays of proceedings is *Puttick v Tenon.*[129] The High Court there restated the test in *Voth v Manildra Flour Mills Pty Ltd*[130] in the following terms:

> In *Voth* the court held that a defendant will ordinarily be entitled to a permanent stay of proceedings instituted against it and regularly served upon it within the jurisdiction, if the defendant persuades the local court that, having regard to the circumstances of the particular case, and the availability of an alternative foreign forum to whose jurisdiction the defendant is amenable, the local court is a clearly inappropriate forum for determination of the dispute. The reasons of the plurality in *Voth* pointed out that the focus must be "upon the inappropriateness of the local court and not the appropriateness or comparative appropriateness of the suggested foreign forum". [emphasis added]

[156] The High Court in *Voth* adopted the test propounded by Deane J in *Oceanic Sun Line*[131] to determine when a forum is a clearly inappropriate one namely, where the continuation of proceedings in a court would be oppressive and vexatious, oppressive in the sense of "being seriously and unfairly burdensome, prejudicial or damaging"[132] and vexatious in the sense of "meaning productive of serious an unjustified trouble and harassment".[133]

[157] An important consideration concerns the enforceability of orders. In *Henry v Henry* at 592:

> If the orders of the foreign court will not be recognized in Australia, that will ordinarily dispose of any suggestion that the local proceedings should not continue. … As well, it will be relevant to consider which

[129] (2008) 250 ALR 582 ('*Puttick*').
[130] *Voth,* above n 118.
[131] *Oceanic Sun Line,* above n 131.
[132] Ibid 247.
[133] Ibid.

forum can provide more effectively for complete resolution of the matters involved in the parties' controversy.

[158] I will attempt to identify in summary form the principles as they relate to the present matter:

(a) "A party who has regularly invoked the court's jurisdiction has a prima facie right to insist upon its exercise and to have its claim heard and determined, which right is not likely to be displaced or denied."[134]

(b) The jurisdiction to stay a proceeding must be "exercised with great care or extreme caution and is only available to be exercised where the court whose jurisdiction has been invoked by the plaintiff is so inappropriate for their determination that a continuance of the proceedings in it would be productive of the injustice, oppression and vexation of the defendant."[135]

(c) The overarching test is whether the Northern Territory is a "clearly inappropriate forum", not the comparative appropriateness of a Norwegian court.[136]

(d) The onus is on the person seeking the stay to show that a trial in the Northern Territory would in fact be productive of injustice because it would be oppressive or vexatious.[137]

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[134] *Global Partners Fund Ltd v Babcock & Brown Ltd* (2010) 267 ALR 144, 171 [142] citing *Oceanic Sun Line* (1988) 165 CLR 197.
[135] Ibid.
[136] *Oceanic Sun Line*, above n 131; *Henry*, above n 119; *Puttick*, above n 132, 589.

(e) "It is prima facie vexatious and oppressive, in the strict sense of those terms, to commence a second or subsequent action in [Australia] if an action is already pending [in another country] with respect to the matter in issue."[138] However, that does not automatically mean that a stay should be granted, and it does not of itself render litigation in Australia inappropriate.[139]

(f) The existence of proceedings elsewhere will have a bearing on whether or not the local proceedings are in fact oppressive or vexatious in the sense described in *Oceanic Sun Line* and *Voth.*[140] But the existence of proceedings in another jurisdiction does not of itself establish that a subsequent action is vexatious. The applicant for a stay must "shew that there is vexation in point of fact, that is to say, that there is no necessity for harassing the defendant by double litigation."[141] It needs to be shown that there is no legitimate interest or point in the subsequent proceedings.[142]

(g) The substantive law of the forum is relevant but is not to be given undue emphasis to the exclusion of other factors.[143]

(h) Whether orders of one forum are enforceable or are recognised in the other forum is a relevant consideration.[144]

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[137] *Zhang*, above n 122, [72], [78].
[138] *Henry*, above n 119, 591.
[139] *Henry*, above n 119, 591; *Commonwealth Bank v White* [1999] 2 VR 681at 704.
[140] *Henry*, above n 119, 591.
[141] *Peruvian Guano Company v Bockwoldt* (1883) 23 Ch D 225, 232 referred to in *Henry* (1996) 185 CLR 571 and in *TS Productions LLC v Drew Pictures Pty Ltd* (2008) 172 FCR 433, 443, [33].
[142] *Henry*, above n 119, 592.
[143] Ibid.

(i) A stay is inappropriate if the proceedings are fundamentally different, notwithstanding that they might share a common factual base,[145] or if the evidence to be adduced will differ in each case.[146]

(j) Likewise, a stay will usually be inappropriate if there is a variance in the availabilities of certain remedies.[147]

(k) The parties' connection with the jurisdiction is a relevant consideration.[148]

(l) The stage that the proceedings in the other jurisdiction have reached[149] and the jurisdiction where the proceedings can be more efficiently resolved[150] are also relevant factors.

[159] An important consideration raised by the plaintiff in the present matter is whether a judgment obtained in the Norwegian proceedings may be able to be enforced in Australia. The *Foreign Judgments Act 1991* (Cth) does not apply as Norway is not a nation whose courts are included in the list in the *Foreign Judgments Regulations 1992* (Cth).

[160] That leaves only the possibility of enforcement of a Norwegian judgment at common law. *Emanuel & Ors v Symon*[151] (part of which has been applied in

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[144] Ibid.
[145] *Commonwealth Bank v White* [1999] 2 VR 681, 704; *TS Productions LLC v Drew Pictures Pty Ltd* (2008) 172 FCR 433,446.
[146] *Commonwealth Bank v White* [1999] 2 VR 681,704 ('*White*').
[147] Ibid,706.
[148] *Henry* above n 119, 592.
[149] Ibid.
[150] Ibid.
[151] *Emanuel*, above n 126.

Australia in *Independent Trustee Services Ltd v Morris*[152]) sets out the circumstances where that can occur. In *Emanuel*, Buckley LJ said:[153]

> In actions in personam there are five cases in which the Courts of this country will enforce a foreign judgment: (1) Where the defendant is a subject of the foreign country in which the judgment has been obtained; (2) where he was resident in the foreign country when the action began; (3) where the defendant in the character of plaintiff has selected the forum in which he is afterwards sued; (4) where he has voluntarily appeared; and (5) where he has contracted to submit himself to the forum in which the judgment was obtained.

[161] It is doubtful that category (2) would apply. I say this because there is no evidence to suggest that Centrebet had an office or business in Norway, or of any other indicia to suggest that it was a resident there. However, I think it likely that category (4) would apply in light of the fact that Centrebet has appeared in and contested the Norway proceedings, albeit initially only to challenge the jurisdiction of the Oslo District Court.

[162] Another major consideration in the context of a stay is that part of the plaintiff's claim against the defendant is a statutory claim under the TPA. That part of the claim remains arguable and the inability of the plaintiff to ventilate that in the Norwegian proceedings is a very relevant factor militating against a stay, as a stay would deprive the plaintiff of its remedy.[154]

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[152] (2010) 79 NSWLR 425.
[153] *Emanuel*, above n 126, 309.
[154] *White*, above n 149.

[163] In the present matter I do not consider that this proceeding should be stayed. The Northern Territory is not a "clearly inappropriate forum".

(a) It is the jurisdiction which Baasland agreed to submit to, and its laws are the laws which he agreed were to apply, when he opened the Account and when he continued his gambling with Centrebet over the ensuing years. Moreover he has expressly waived any right to object to any proceedings being brought in the Northern Territory.[155]

(b) The facts and circumstances upon which Baasland relies in the Norway proceedings would not provide him with a cause of action in Australia.

(c) Centrebet's claim under the TPA would not be available in Norway.

(d) The Northern Territory forum "can provide more effectively for the complete resolution of the matters involved in the parties' controversy".[156]

(e) A judgment in the Norway proceedings will not be enforceable in Australia using the *Foreign Judgments Act 1991* (Cth).

(f) The proceedings in Norway are not significantly advanced. The hearing of Baasland's claim cannot proceed until a final determination is made regarding the law to be applied in that proceeding.

[155] Centrebet Rules, r 3.18.
[156] *Henry*, above n 119, 592.

Conclusions and Orders

[164] Accordingly I do not propose to stay the proceedings or the separate trial.

[165] I do propose to make a negative declaration so as to declare my conclusions expressed above, namely a declaration to the effect that there is no money owing by Centrebet on the Account which it had with Baasland and that Centrebet has no liability to Baasland under the Contract or in relation to its performance.

[166] Because of the need for the declaration to be in a clear and unambiguous form I propose to give the plaintiff the opportunity to redraft the wording in paragraph 20.3 of the Statement of Claim into a form which is consistent with my conclusions.

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