

**IN THE COURT OF COMMON PLEAS
WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION**

JANINE LITMAN and TIMOTHY
MASTROIANNI, individually and
jointly,

Plaintiffs,

v.

CANNERY CASINO RESORTS, LLC, a
Nevada limited liability company,
WASHINGTON TROTTHING ASSOCIATION,
INC., a Delaware corporation, WTA
ACQUISITION CORP., a Delaware corporation,
CANNERY CASINO RESORTS, LLC,
CANNERY CASINO RESORTS and
WASHINGTON TROTTHING ASSOCIATION,
INC., t/d/b/a THE MEADOWS RACETRACK
& CASINO, an unincorporated association,
CANNERY CASINO RESORTS, an
unincorporated association consisting of one
or more yet unidentified natural and/or legal
persons, individually and jointly,

Defendants.

CASE NO. 2012-8149

**MOTION TO DISMISS FOR
LACK OF SUBJECT MATTER
JURISDICTION**

Filed on behalf of Defendants,
Cannery Casino Resorts, LLC,
Washington Trotthing Association,
Inc., WTA Acquisition Corp.,
Cannery Casino Resorts, LLC,
Cannery Casino Resorts and
Washington Trotthing Association,
Inc. t/d/b/a The Meadows
Racetrack & Casino, and
Cannery Casino Resorts

Counsel of Record for these
parties:

William L. Stang, Esquire
PA Id. No. 33221
Benjamin I. Feldman, Esquire
PA Id. No. 312683

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WASHINGTON TROTTHING ASSOCIATION,
INC., a Delaware corporation, WTA
ACQUISITION CORP., a Delaware corporation,
CANNERY CASINO RESORTS, LLC, CANNERY
CASINO RESORTS and WASHINGTON TROTTHING
ASSOCIATION, INC. t/d/b/a THE MEADOWS
RACETRACK & CASINO, an unincorporated
association, CANNERY CASINO RESORTS, an
unincorporated association consisting of one
or more yet unidentified natural and/or legal
persons, individually and jointly,

Defendants.

MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

Defendants, Cannery Casino Resorts, LLC, a Nevada limited liability company,
Washington Trotting Association, Inc., a Delaware corporation, WTA Acquisition Corp.,
a Delaware corporation, Cannery Casino Resorts, LLC, Cannery Casino Resorts and
Washington Trotting Association, Inc. t/d/b/a The Meadows Racetrack & Casino, an

unincorporated association, and Cannery Casino Resorts,¹ an unincorporated association consisting of one or more yet unidentified natural and/or legal persons, individually and jointly, by and through their counsel, William L. Stang, Esquire, Benjamin I. Feldman, Esquire and Fox Rothschild LLP, file this Motion To Dismiss For Lack of Subject Matter Jurisdiction (the “Motion to Dismiss”) as follows:

INTRODUCTION

1. The present case involves Plaintiffs’ claims that Defendants, as owners and operators of a gambling establishment known as “The Meadows” (a) have engaged in improper and misleading advertising, (b) have failed to make proper registrations with the Commonwealth of Pennsylvania and (c) have failed to comply with rules established for the operation of gambling establishments.

2. Defendants emphatically deny Plaintiffs’ allegations of wrongdoing, as set forth in Plaintiffs’ Third Amended Complaint (the “Complaint”), and Defendants will produce evidence showing that for various reasons Plaintiffs’ claims are inappropriate and/or unjustified. However, given the nature of the claims made by Plaintiffs, and the intent of the legislature in enacting the Pennsylvania Race Horse Development and Gaming Act (the “Gaming Act”), 4. Pa.C.S. § 1101 et seq., Defendants submit that the court does not have subject matter jurisdiction over the claims raised by Plaintiffs.

¹ It is denied that the Defendant identified as “Cannery Casino Resorts” exists as an entity separate and distinct from the Defendant identified as “Cannery Casino Resorts, LLC.” Further explanation concerning Plaintiffs’ mistaken identification of Defendants will be made subsequent to disposition of this Motion to Dismiss.

RELEVANT CHRONOLOGY

3. Plaintiffs' Complaint alleges fourteen (14) separate causes of action against Defendants. The causes of action are for (a) Count I – Breach of Oral Contract, (b) Count II – Breach of Written Contract, (c) Count III – Breach of Contract Implied in Fact, (d) Count IV – Unjust Enrichment, (e) Count V – Breach of Fiduciary Duty, (f) Count VI – Tortious Interference with Contract and Prospective Business Relations and Advantage, (g) Count VII – Unfair and Deceptive Trade Practice, (h) Count VIII – Fraud, (i) Count IX – Conversion, (j) Count X – Negligence, (k) Count XI – Violation of Gaming, 4 Pa.C.S.A., (l) Count XII – Civil Conspiracy, (m) Count XIII – Accounting, and (n) Count XIV – Special Damages.

4. As noted above, each cause of action relates to the claim that Defendants have failed to comply with relevant gaming laws and/or regulations. For example, in Count IV Plaintiffs accuse Defendants of “cheating and failure to follow the rules of the game, and by failing to comply with its Commonwealth license.” (Complaint, par. 55). And in Count XI of the Complaint, Plaintiffs allege that Defendants have “violated the Pennsylvania Gaming Laws and related regulations, 4 Pa.C.S.A., et seq., including but not limited to 58 Pa.Code, et seq.” (Complaint, par. 100) (See also, Complaint, par. 8-26).

5. Defendants have filed Preliminary Objections to Plaintiffs' Complaint. Those Preliminary Objections are pending and are scheduled for argument on October 7, 2013 at 9:30 a.m. It is Defendants' counsel's understanding that this Motion to Dismiss is to be presented concurrent with argument on the Preliminary Objections.

LEGISLATIVE BACKGROUND

6. In July of 2004, the Pennsylvania legislature enacted the Gaming Act, a comprehensive regulatory scheme that provides, *inter alia*, for the regulation of slot machine gaming, table gaming, and racetrack gaming at licensed facilities within the Commonwealth of Pennsylvania. 4 Pa.C.S. § 1102. The primary objective of the Gaming Act is “to protect the public through the regulation and policing of all activities involving gaming and practices that continue to be unlawful.” 4 Pa.C.S.A. § 1102(1).

7. As part of the Gaming Act, the legislature created a Pennsylvania Gaming Control Board (the “Gaming Control Board”) and vested it with the “general and sole regulatory authority over the conduct of gaming or related activities as described in this part.” 4 Pa.C.S.A. § 1202. The mission of the Gaming Control Board is to “protect the interest of the public by ensuring the integrity of legalized gaming through the strict enforcement of the law and regulations. . . .” Pennsylvania Gaming Control Board Mission Statement. See, <http://gamingcontrolboard.pa.gov/?p+144> (September 26, 2013).

8. The Gaming Act states, in part, at 4 Pa.C.S.A. § 1202(a)(1) that the Gaming Control Board “shall ensure the integrity of the acquisition and operation of slot machines, table games, table game devices and associated equipment and shall have sole regulatory authority over every aspect of the authorization, operation and play of slot machines and table games.”

9. Moreover, pursuant to 4 Pa.C.S. § 1202(b)(19) the Gaming Control Board shall have the “specific power and duty to levy fines or other sanctions against an applicant, licensed entity or other licensee, permittee or employee of the board who

possesses, uses, sells or offers for sale any device, equipment or material subject to this part in a manner which constitutes a violation of this part.”

10. Enforcement of the Gaming Act is assigned to the Gaming Control Board. The Gaming Control Board, and specifically, its Bureau of Investigations and Enforcement (the “Bureau”), is vested with the full police power to enter any licensed gaming establishment without notice and without warrant to check for violations of the Gaming Act. See, 4 Pa.C.S.A. § 1517.

11. In addition, the Gaming Control Board provides a procedure for the resolution of certain disputes for patrons of gaming establishments who believe that a violation of the Gaming Act has occurred. In this respect, a Dispute/Complaint form is available on the Gaming Control Board website at gamingcontrolboard.pa.gov/files/bie/Complaint_Form.pdf. A copy of the form is attached hereto as Exhibit A.

ARGUMENT

12. Pennsylvania Rule of Civil Procedure 1032(b) states, “(w)henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter... the court shall order that the action be transferred to a court of the Commonwealth which has jurisdiction or that the indispensable party be joined, but if that is not possible, then it shall dismiss the action.” Pa.R.C.P. No. 1032(b).²

² Pa.R.C.P. 1032 provides no procedure for invoking this provision. However, “the simplest method of securing dismissal of the action under it is with a motion to dismiss.” Goodrich Amram 2d § 1032(b):3; see also Intersport, Inc. v. Remi Claeys-Superia, 5 Pa. D. & C.3d 724 (Pa.Ct.Com.Pl. 1977).

13. Throughout their Complaint, Plaintiffs allege that (a) Defendants have engaged in false and misleading advertising relating to ownership and operation of The Meadows, (b) Defendants are operating a gambling facility without a proper license and without proper registrations, (c) Defendants are engaged in illegal and unfair trade practices and (d) Defendants have failed to comply with various rules and regulations applicable to gaming.

14. To the extent Plaintiffs seek to address the allegations of their Complaint, and specifically the allegations concerning requirements of the Gaming Act and regulations, they must voice their concerns to the Gaming Control Board which is the sole entity charged with regulating the activities of gaming entities in this Commonwealth. See, 4 Pa.C.S. § 1202.

15. In other words, the Court of Common Pleas does not have jurisdiction over any of Plaintiffs' claims since the Gaming Control Board has been granted the sole regulatory authority over the conduct of gaming. Therefore, to the extent that Plaintiffs' claims involve the conduct of gaming, those claims are addressed by specific sections of the Gaming Act and/or its regulations.

16. In fact it appears that Plaintiffs have already raised the issues addressed in their Complaint to the Gaming Control Board and they are apparently not satisfied with the result.

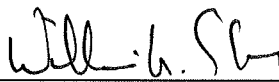
17. Since the Gaming Control Board is granted the "sole regulatory authority over every aspect of the authorization, operation and play of slot machines and table games," it is apparent that the Court does not have subject matter jurisdiction over any of the claims raised in Plaintiffs' Complaint.

18. For the foregoing reasons, Defendants request that the Court dismiss Plaintiffs Complaint. See Retail Clerks Union Pa. State Store Organizing Committee v. Com., 357 A.2d 244 (Pa. Commw. Ct. 1976) (affirming trial court's dismissal of complaint for lack of subject matter jurisdiction based on exclusive jurisdiction of agency board).

WHEREFORE, Defendants request that Plaintiffs' Third Amended Complaint be dismissed for lack of subject matter jurisdiction.

Respectfully submitted,

FOX ROTHSCHILD LLP

By:  _____

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PA Id. No. 33221

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PENNSYLVANIA GAMING CONTROL BOARD

P.O. Box 69060
Harrisburg, Pennsylvania
17106-9060

Instructions for Submitting a Patron Dispute/Complaint: The Pennsylvania Race Horse Development and Gaming Act ("the Act") charges the Bureau of Investigations and Enforcement ("BIE") with the duty of investigating all potential non-criminal violations of the Act alleged by the Board or any other person, including complaints and disputes alleged by patrons. A complaint is a difference of opinion between the licensed gaming entity and the patron, which does not involve money or items of value. A dispute is a claim for a specific amount of cash or merchandise.

Patrons that have a complaint or a dispute with a licensed gaming entity in the Commonwealth of Pennsylvania may request BIE to investigate such complaint or dispute. All patron complaints and disputes are taken very seriously by the Pennsylvania Gaming Control Board. Each complaint is assigned a case number and an investigator for immediate investigation.

In order to investigate a patron claim or dispute, the patron must complete this form accurately and legibility within thirty (30) calendar days of the incident, then mail or fax the form to:

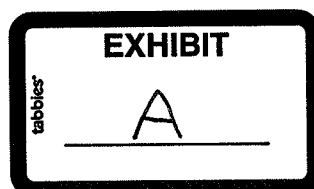
Pennsylvania Gaming Control Board
Patron Complaints
Bureau of Investigations and Enforcement
P.O. Box 69060
Harrisburg, PA 17106-9060
Fax: (717) 214-5467

Patrons will receive immediate notification of the Board's receipt of the Patron Dispute/Complaint Form. You are advised to make a photocopy of your complaint form for future reference. Any questions or comments regarding patron disputes or complaints can be directed to the Director of Enforcement at 717-346-8300 or to casinocomplaints@state.pa.us.

Any criminal violations of the Act alleged by a patron will be referred to the Pennsylvania State Police for investigation.

58 Pa.Code §461.4(n) provides that if a dispute arises with a patron concerning payment of alleged winnings, the slot machine licensee shall notify the patron in writing, concurrent with its initial receipt of notice of the dispute, that the patron has the right to contact the Board with regard to the dispute.

58 Pa.Code §461.4(o) provides that when a slot machine licensee refuses to pay winnings claimed by a patron and the patron and the slot machine licensee remain unable to resolve the dispute after seven (7) days, the slot machine licensee shall, on the next day, notify the Board in writing of the dispute in a manner and form the Board prescribes. The notice must identify all parties to the dispute and shall state all known relevant facts regarding the dispute.



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RACETRACK & CASINO, an unincorporated
association, CANNERY CASINO RESORTS, an
unincorporated association consisting of one
or more yet unidentified natural and/or legal
persons, individually and jointly,

Defendants.

ORDER OF COURT

AND NOW this _____ day of _____, 2013, upon
consideration of Defendants' Motion To Dismiss For Lack of Subject Matter Jurisdiction,
it is hereby ORDERED that the Third Amended Complaint is DISMISSED.

BY THE COURT:

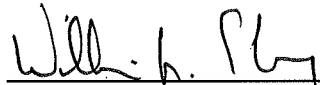
_____, J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Dismiss for Lack of Subject Matter Jurisdiction was served upon counsel as addressed below via e-mail and regular mail on the 2nd day of October, 2013:

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