

Date: 1998 04 06
Docket: CV 07528

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

SOARING EAGLE FRIENDSHIP CENTRE

Appellant (Defendant)

- and -

HARVEY WERNER

Respondent (Plaintiff)

Appeal from judgment in a Territorial Court civil claim awarding damages due to a breach of contract. Appeal allowed.

Heard in Yellowknife, NT, on March 30, 1998 and in Hay River, NT, on April 1, 1998

Judgment filed: April 6, 1998

REASONS FOR JUDGMENT OF THE HONOURABLE J.Z. VERTES

Counsel for the Appellant: W.E. Gagnon & P.M. Simpson
The Respondent represented himself.

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REASONS FOR JUDGMENT

[1] This is an appeal from a civil judgment granted in Territorial Court. The facts are succinctly summarized in the reasons of the trial judge:

This is an action arising out of a raffle conducted by the defendant wherein the plaintiff purchased tickets to participate in the raffle. The defendant organized and sold tickets to the general public at five dollars (\$5.00) per ticket for a chance to win three prizes as set out on the face of the ticket, namely:

- 1st: Two Grey Cup tickets and airfare for two
Hay River to Edmonton return (value \$2,278.00)
- 2nd: Two airline tickets from
Hay River to Yellowknife return (value \$431.00)
- 3rd: Moose hair tufting (value \$300.00)

The draw date was to be August 31, 1997 and the raffle was conducted under Lottery Licence #M97-05 with 2,000 tickets printed.

At a meeting of the Board of Directors of the defendant on June 24, 1997 it was decided that the first ticket drawn would receive 3rd prize, the second ticket drawn would receive 2nd prize and the third ticket drawn would receive 1st prize. Nowhere was this decision explained or advertised or disclosed on the tickets themselves. It was not until just before the draw that the order of awarding prizes was announced to those present.

The plaintiff had purchased a number of tickets prior to the draw on August 31, 1997 and was not present at the time the order of draw was announced. One of the plaintiff's tickets was the first to be drawn and he attended at the draw shortly after and was told by others he'd been drawn first and he'd won a prize. The plaintiff was met by a representative of the defendant and advised he'd won 3rd prize, the moose hair tufting. The plaintiff indicates he refused to accept the prize as he felt since his ticket was drawn first he should have won 1st prize. The defendant indicates through witnesses that the plaintiff gave the prize back and a decision was made to draw another ticket to award this prize, which was done immediately.

[2] The trial judge held that the appellant breached its contract with the respondent by imposing rules that were not disclosed at the time the contract was made, that being at the point when the respondent purchased his lottery ticket. He then went on to award as damages the value of the first prize on the basis that, since the respondent's ticket was drawn first, he should have received the first prize.

[3] The trial judge summarized his reasons as follows:

In the end the plaintiff had no notice that prizes would be awarded in reverse order or that a ticket was only good for one prize. The special rules and conditions were not available at the location tickets were sold but only upon request and at the defendant's office. As indicated earlier, there were other matters of noncompliance which do not directly affect the issue here.

The plaintiff purchased his ticket and in effect made a contract with the defendant for a \$5.00 consideration to have a chance to win the three prizes advertised and, if drawn first, to win 1st prize. It is basic contract law that any other conditions that effect the contract must be set out and agreed to by the parties. This simply was not the case here as the other rules and conditions were not disclosed at the time of sale which is the time the contract was made. It is my view that one party to a contract cannot later impose conditions upon the other party after the contract is made. Reading out the special rules prior to the actual draw cannot cure this defect.

I am satisfied that the plaintiff purchased a ticket (a chance) to win three prizes described and was entitled to depend on the prizes being awarded in the order set out. If his ticket was drawn first, he was entitled to 1st prize unless there was some notice otherwise at the time the ticket was purchased. Further, he was entitled to have his ticket returned to the drum for a chance on each of the remaining prizes unless there was notice otherwise at the time of purchase.

[4] In my respectful opinion, the trial judge erred in his analysis.

[5] Lotteries are regulated through the *Lotteries Act*, R.S.N.W.T. 1988, c.L-11. By that statute the territorial government may delegate the authority to regulate and licence lottery schemes to a community council. By a regulation enacted on April 1, 1997, the government delegated this authority to the Town of Hay River and stipulated that the territorial *Lotteries Regulations* do not apply to lotteries held in Hay River. In furtherance of this delegation the Council of the Town of Hay River enacted By-Law No.1653 for the establishment of lottery guidelines and regulations. Among those guidelines was the following respecting rules for raffles:

Rules for raffles may include:

The organization shall establish any rules or conditions concerning the conduct of the draw prior to the start of ticket sales. These rules shall be available to any ticket buyer and shall be read immediately prior to the draw:

- 1) age limit of ticket purchasers
- 2) procedures for draw
- 3) restrictions regarding ticket purchase by members of sponsoring organization and
- 4) immediate families, (if applicable)
- 5) minimum number of tickets must be sold before either:
 - A) a draw date extension is requested.
 - B) raffle will be cancelled.
- 6) order in which prizes will be drawn

[6] Notwithstanding the awkward wording of this condition, it seems to me clear that the intention of Town Council was to allow the organization running the lottery (and only a “charitable organization” such as the appellant in this case is entitled to obtain a lottery licence) to set the rules for the draw and those rules may include the items numbered 1 through 6 above. Once made the rules shall be available to a ticket buyer and read

immediately prior to the draw. There is no specific procedure for the draw that must be followed (the same is true if one were to look at the territorial *Lotteries Regulations*).

[7] As noted in the trial judge's summary of the facts, the appellant's board met and decided on the order of the draw. The first ticket drawn would get the third prize; the second ticket drawn would get the second prize; and, the third ticket drawn would get the first prize. Leaving aside other considerations, it seems to me that there is no support to the proposition that the ticket drawn first would be still eligible for the subsequent prizes. Clearly these rules mean that three different tickets would be drawn. Otherwise there would be the prospect that with one ticket one could win all three prizes. I should add that the respondent agreed that this is not a tenable position.

[8] The evidence revealed that the respondent made no inquiries as to the rules of the draw. Those rules were publicly announced prior to the draw. The respondent may not have been personally present when such announcement was made but that is immaterial. The draw was conducted in accordance with those announced rules.

[9] The guidelines require that the rules be "available" to "any" ticket buyer. They do not say how they are to be available nor do they say that they must be available to each ticket buyer. The trial judge stated in his reasons: "The evidence discloses that these rules were not available to any ticket buyer but only available at the defendant's office upon request." It seems to me that making the rules available at the office satisfies the guidelines. Even if one were to have regard to the territorial *Lotteries Regulations*, it is clear that nothing mandates how the rules are to be made known to the ticket buyer. The rules need not be printed on the ticket. In this case the actual ticket sold complied with all the mandatory requirements of those Regulations. In addition, those Regulations require only that "the rules of all lotteries shall be approved by and shall be posted in accordance with the instructions of the Minister." Again, nothing mandates that the rules be explicitly brought to the attention of each ticket buyer. Of course, here, there was no ministerial instruction since the territorial regulations are not applicable to lotteries licensed by the Town of Hay River.

[10] The appellant did all it was obliged to do by the operative guidelines. In my opinion it is error to read into those requirements some type of specific notice to each ticket buyer as to the manner in which the draw will be conducted. The rules were set beforehand and they were followed. There is no foundation for a conclusion that the appellant imposed conditions after the contract was made. Nor is it quite accurate to say that the conditions must be agreed to and accepted by the parties. This is not the normal contract that is open to negotiation on acceptable terms. Here the appellant offers, in

exchange for the price of a ticket, the chance to win a prize. The offeree can take it or leave it. If he takes it then he is subject to the rules set, in this instance, by the appellant.

[11] In this case all that the respondent can say is that he “expected” that the first ticket drawn would win the first prize. The trial judge seems to have accepted this expectation as a reasonable one. In my opinion the expectation would be reasonable only if the respondent had made some effort to ascertain the order of the draw. All the respondent could reasonably expect was one chance for each ticket purchased to win one of the prizes. The fortuitous fact that his ticket was drawn first means merely that he is entitled to the prize that was to be awarded for the first ticket as predetermined by the lottery operator.

[12] Appellant’s counsel indicated that they have been unable to locate any authorities touching on these issues. As a matter of fact *Chitty on Contracts* (26 ed.), volume 2, has 31 pages devoted to “gaming and wagering”. One case that provides some assistance is the decision of the Judicial Committee of the Privy Council in *Cipriani v. Burnett*, [1933] A.C. 83. There the respondent bought a ticket in a sweepstake in connection with a horse race. Printed on the ticket was the condition that upon any dispute arising the decision of the people running the sweepstakes was to be final. Upon the drawing taking place the owner of another ticket was declared to be the winner of the first prize. The respondent complained about the manner in which the number was drawn claiming that he held the winning ticket. The specific complaint was that the winning number was announced by reading a combination of numbered balls and discs, drawn at random, from right to left instead of from left to right. The Privy Council dismissed the action on procedural points. Among the comments found in the judgment, however, were the following (at page 90):

It may be that the machine was not operated as it was intended to be worked, but it is at least satisfactory to note that there is no suggestion that Mr. Cipriani’s mistake, if mistake it was, in the method of declaring the figures, was made otherwise than in good faith. It appears that throughout the draw he read all the figures the same way -- namely, from right to left, and, that being so, the result was just as fortuitous as if he had read them all from left to right. The sweepstake, as their Lordships have observed, was controlled by the Club, and there would appear to have been nothing to prevent the Club, through its representative, from deciding in which way the figures should be read, provided that the decision preceded the ascertainment of the figures. It would certainly be improper for the person conducting the draw to decide, after the figures were known by the discs coming to rest, in which order he would read them, for that would plainly introduce an element of

choice into a process intended to depend for its result entirely on chance. (emphasis added)

[13] In the case before me, as in *Cipriani*, the appellant had control of the raffle and set rules for the draw. Those rules were not arbitrary, secret, or unfair. They applied equally to all ticket buyers. The rules were ones that were within the appellant's authority to make. In my opinion, the respondent has no cause for complaint. There was no breach of contract.

[14] The respondent argued before me that the appellant organization did not comply with one other aspect of the by-law. Under the heading of "Game Conduct" is the following: "Prizes must be awarded exactly as described on the licence application." The respondent submitted that this should be interpreted to mean not only that the exact prizes must be awarded but also in the exact order listed on the licence. I do not think that is a reasonable interpretation. This condition simply applies to the state of the prizes. To hold otherwise would mean that there is no point to the organization setting rules for the procedure of draw. Those rules need be made only before the start of ticket sales, not before the submission of the licence application.

[15] Both the respondent and the trial judge emphasized that it would be a simple matter to print the order of draw on the tickets or on the advertising sheets. That may be so. But the point of this case is not what could have been done but what was done and whether there was any breach of contract by the appellant. In my opinion, as stated above, the appellant conducted this lottery in a manner consistent with the applicable guidelines. Thus there is no breach of contract. I hasten to add, as the trial judge did, that the validity of the by-law was not in issue.

[16] In his reasons for judgment the trial judge also made a number of comments respecting the confusing manner in which the Town's by-law is written. I agree with his comments. In particular, the by-law purports to incorporate the territorial regulations. This the municipality obviously cannot do in light of the territorial regulation delegating authority to the municipality which expressly states that those regulations do not apply. This territorial directive overrides the municipal by-law provision. The Town could repeat those sections of the territorial regulations that it wishes to adopt word for word so as to make them the Town's regulations. But, as of now, it seems to me that the territorial regulations per se have no part to play in this appeal. The trial judge also observed that there were some instances of non-compliance with certain aspects of the regulations or guidelines. Suffice it to say that, in my opinion, such incidents of non-

compliance as there may have been, if any, are not connected to the subject matter of this action and therefore are irrelevant.

[17] For these reasons, the appeal is allowed. The trial judgment is set aside. The claim for damages is dismissed. There will be no order as to costs.

J.Z. Vertes,
J.S.C.

Dated at Yellowknife, NT, this
6th day of April, 1998

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The Respondent represented himself.

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