

[Cite as *Costantini v. Ohio Lottery Comm.*, 2004-Ohio-6584.]

IN THE COURT OF CLAIMS OF OHIO

LAURE COSTANTINI, et al.	:	
Plaintiffs	:	CASE NO. 2003-11615
		Judge Fred J. Shoemaker
v.	:	
		<u>DECISION</u>
OHIO LOTTERY COMMISSION	:	
Defendant	:	
:::::::::::::		

{¶ 1} On October 13, 2004, defendant filed a motion for summary judgment. In addition, on October 22, 2004, defendant filed a notice of supplemental authority. On November 5, 2004, plaintiffs filed a memorandum in opposition. The case is now before the court for a non-oral hearing on the motion for summary judgment. Civ.R. 56(C) and L.C.C.R. 4.

{¶ 2} Civ.R. 56(C) states, in part, as follows:

{¶ 3} “*** Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party’s favor. ***” See, also, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} It is alleged in the complaint that each plaintiff purchased a Holiday Wishes lottery ticket in 2001 and that in Game 3 on each of those tickets two “like prizes” were matched. Plaintiffs allege that, according to the rules printed on the front of the ticket, a match of two like prizes in Game 3 entitles them to a prize and that defendant breached its contract by refusing to honor the tickets. Defendant contends that the front of the tickets contains a misprint and that plaintiffs are not entitled to the prize under the rules of the game. Plaintiffs counter that defendant should be made to pay the prize because the misprint was the result of defendant’s own negligence.

{¶ 5} Sale and purchase of lottery tickets are governed by general principles of contract law. *Peters v. Ohio Lottery Commission* (1992), 63 Ohio St.3d 296, 299. Lottery tickets, such as those purchased by plaintiffs herein, contain express terms requiring compliance with the rules and regulations of the commission, and lottery players are deemed to agree to abide by the terms of the game. See *Woodbridge Partners Group, Inc. v. Lottery Com.* (1994), 99 Ohio App.3d 269; *Board v. Ohio Lottery Comm.* (Dec. 14, 1999), Franklin App. No. 99AP-208; *Rice v. Ohio Lottery Comm.* (1999), 96 Ohio Misc.2d 25.

{¶ 6} Persons who play the Ohio Lottery are on notice that the rules that govern these games are outlined in the Ohio Administrative Code. *Woodbridge*, supra, at 272-73. The relevant lottery commission regulations are found at Ohio Adm.Code Section 3770:1-9-193(B)(1(c) which provides, in pertinent part:

{¶ 7} “‘Game 3’ – the player reveals six prize values or five prize values and a ‘Bell’ symbol. The player must match *three like prize values* to win that prize amount. If the player matches two like prize values and a ‘Bell’ symbol is revealed, the player wins double that prize amount.” (Emphasis added.)

{¶ 8} In support of the motion for summary judgment, defendant submitted a letter sent to plaintiffs by defendant’s then chief legal counsel, Kathleen G. Weiss,¹ wherein Weiss speaks to the problem with the tickets purchased by plaintiffs, as follows:

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The letter is attached as an exhibit to the affidavit of defendant’s current chief legal counsel, Quan T. Kirk.

{¶ 9} “*** In game three, players were required under the play instructions to match three like prize amounts and win that prize or to match two like prize amounts plus a ‘Bell’ symbol to win double that prize. These instructions are clearly stated on the front and back of each ticket. Unfortunately, in game three on the front of the two tickets submitted by your clients, a ‘plug’ partially covers the ‘3’ where the player is required to match three like prize amounts.

{¶ 10} “***

{¶ 11} “Pursuant to the game rule, the Director has declared ‘void’ any misprinted tickets in the *Holiday Wishes* instant game. His authority to do so can be found at OAC §3770:1-9-193(I)(2). *** The Director’s declaration that any misprinted tickets in the *Holiday Wishes* game are void includes the four tickets submitted for consideration by [plaintiffs].

{¶ 12} “[Plaintiffs] are entitled to a refund of the purchase price for the ticket, or they are entitled to another instant lottery ticket of comparable price. ***”

{¶ 13} Plaintiffs concede that the front of each ticket contains a misprint. Nevertheless, plaintiffs argue that the misprint on the ticket creates an ambiguity and that the ambiguity should be resolved in their favor, since the tickets were printed by defendant. The court disagrees.

{¶ 14} If language in a contract is clear and unambiguous, “[a] court cannot in effect create a new contract by finding an intent not expressed in the clear language employed by the parties.” *Alexander v. Buckeye Pipe Line Co.* (1978), 53 Ohio St.2d 241, 246. If no ambiguity exists, the terms of the contract must simply be applied without resorting to methods of construction and interpretation. *Id.* The Supreme Court of Ohio has held that “[i]f a contract is clear and unambiguous, then its interpretation is a matter of law and there is no issue of fact to be determined.” *Inland Refuse Transfer Co. v. Browning-Ferris Industries of Ohio, Inc.* (1984), 15 Ohio St.3d 321, 322. Additionally, contracts must be read as a whole and interpreted so as to give effect to every provision. *Farmers’ National Bank v. Delaware Ins. Co.* (1911), 83 Ohio St. 309, 337. The mere fact that parties to a contract adopt conflicting interpretations of the document does not create ambiguity or a basis for interpretation of the contract language where no ambiguity can reasonably be said to exist in the language. *Complete General Construction Company v. Koker Drilling Co.*, Franklin App. No. 02AP-63, 2002-Ohio-4778. The question of whether ambiguity or uncertainty in the language of a contract requires resort to extrinsic evidence to ascertain the intent of the parties is

a question of law for the court. *Latina v. Woodpath Dev. Co.* (1991), 57 Ohio St.3d 212, 214 (“if a contract is clear and unambiguous, then its interpretation is a matter of law and there is no issue of fact to be determined”); *Davis v. Loopco Industries, Inc.*, 66 Ohio St.3d 64, 66, 1993-Ohio-195; *P & O Containers, Ltd. v. Jamelco, Inc.* (1994), 94 Ohio App.3d 726, 731 (“the interpretation of a written contract is a question of law, absent patent ambiguity”).

{¶ 15} Ohio Adm.Code 3770:1-9-193 speaks directly to the issue of misprinted tickets as follows:

{¶ 16} “(I) Validity of tickets.

{¶ 17} “(1) A mechanical error in printing prize awards, symbols, words or other numbers on a ticket shall not automatically invalidate that ticket. To the extent feasible, the director shall establish procedures by which the holder of any ticket on which information is incorrectly printed due to mechanical malfunction may be advised of correct information for the ticket. If it is not technically feasible to recover the information from a mechanically misprinted ticket, the director may declare the ticket void and the holder shall be entitled to a return of the ticket price or a replacement ticket of comparable price.

{¶ 18} “(2) In addition to, but not in limitation of, all other power and authority conferred on the director by the commission’s rules, the director may declare a ticket in game number one hundred ninety-three void if it is stolen, unissued, deactivated, not sold or deemed not sold in accordance with commission rules; if it is illegible, mutilated, altered, counterfeit, misregistered, reconstituted, miscut, defective, printed or produced in error or incomplete; or if the ticket fails any of the validation tests or procedures established by the director. The commission’s liability and responsibility for a ticket declared void, if any, is limited to refund of the retail sales price of the ticket or issuance of a replacement ticket of comparable price. ***”

{¶ 19} The court finds, as a matter of law, that the express terms set forth above clearly and unambiguously provide that the player must either match three like values in order to win, or match two like values and a “bell symbol” to win double that amount. Additionally, the regulations clearly and unambiguously grant defendant’s director the discretion to void misprinted or illegible tickets such as those purchased by plaintiffs. Despite plaintiffs’ protestations to the contrary, the contract at issue is not reasonably susceptible to another interpretation.

{¶ 20} There is no dispute in this case that when plaintiffs presented their tickets for redemption, the director exercised his authority under the relevant code provisions and declared the misprinted tickets void. Under the terms of the parties' agreement, defendant's liability and responsibility for a ticket declared void is limited to either refund of the retail sales price of the ticket or issuance of a replacement ticket of comparable price.

{¶ 21} In short, given the clear and unambiguous terms of the contract at issue, plaintiffs cannot prevail on their breach of contract claim as a matter of law. Accordingly, upon review of defendant's motion for summary judgment and the memoranda filed by the parties, and construing the facts in a light most favorable to plaintiffs, the court finds that no genuine issues of material fact exist and that defendant is entitled to judgment as a matter of law.

{¶ 22} Defendant's motion for summary judgment shall be GRANTED and judgment shall be entered in favor of defendant.

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		<u>JUDGMENT ENTRY</u>
OHIO LOTTERY COMMISSION	:	
Defendant :		
: : : : : : : : : : :		

A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

FRED J. SHOEMAKER
Judge

Entry cc:

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