

**NOT DESIGNATED FOR PUBLICATION**

**JEBACO, INC.**

\*

**NO. 2010-CA-0872**

**VERSUS**

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**COURT OF APPEAL**

**HARRAH'S OPERATING CO.,**

\*

**FOURTH CIRCUIT**

**INC.; HARRAH'S LAKE**

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**STATE OF LOUISIANA**

**CHARLES, L.L.C.; HARRAH'S**

**STAR PARTNERSHIP;**

\*\*\*\*\*

**PLAYERS LC, L.L.C.;**

**PLAYERS RIVERBOAT**

**MANAGEMENT, L.L.C.;**

**PLAYERS RIVERBOAT II,**

**L.L.C.; AND PINNACLE**

**ENTERTAINMENT, INC.**

APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2008-2782, DIVISION "E-7"  
Honorable Madeleine Landrieu, Judge

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**Judge Dennis R. Bagneris, Sr.**

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(Court composed of Judge Patricia Rivet Murray, Judge Dennis R. Bagneris, Sr.,  
and Judge Edwin A. Lombard)

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INC.**

**AFFIRMED**

**JANUARY 12, 2011**

Jebco, Inc. appeals the February 10, 2010, judgment of the district court that resulted in the dismissal of Jebco's claims against Harrah's Operating Company, Inc., Players LC, L.L.C, Players Riverboat II, L.L.C, (collectively "Harrah's") and Pinnacle Entertainment, Inc. For the reasons that follow, we affirm the judgment of the district court.

### **Facts<sup>1</sup>**

Harrah's operated two riverboat casinos for several years in Lake Charles, Louisiana until Hurricane Rita hit the coastline in 2005. Harrah's leased the site of the riverboats from Beeber Corporation.

Jebco asserts that it was the first company to develop a riverboat casino in Lake Charles and that in 1993 Players executed a lease with Beeber so it could commence its gaming operations at the Lake Charles downtown berths. After a legal dispute, in 1995, Beeber, Players, Jebco, and others, entered into a Settlement Agreement wherein Jebco claims it was to receive \$1.525 for "every net patron that entered the casinos at the Lake Charles downtown berths until 2023". Jebco

maintains that the duration of the Settlement Agreement was until 2023 or until the gaming operations were ceased, whichever was earlier. However, Jebco also maintains that the Agreement could remain in effect for up to five years after the cessation of gaming operations and that the Agreement ensured such payments in the event the gaming vessels were to operate elsewhere in the Lake Charles Metropolitan Statistical Area (MSA).

In 2000 Harrah's acquired Players.

On September 24, 2005, Hurricane Rita severely damaged Harrah's riverboats in the Lake Charles area. Thereafter Harrah's entered into negotiations with Pinnacle Entertainment for the sale of the entities which had operated the riverboats. The transaction between Harrah's and Pinnacle was "vetted" by the Louisiana Gaming Control Board.

## **Procedural History**

### **Federal Proceedings**

In August 2006, Jebco filed suit in the U.S. District Court for the Eastern District of Louisiana alleging violations of federal antitrust claims, the Louisiana Unfair Trade Practices Act (LUPTA). Jebco also alleged state law claims against Harrah's. On March 8, 2008 the federal court dismissed Jebco's antitrust claims and declined to exercise its pendent jurisdiction over the state law claim, dismissing them without prejudice<sup>2</sup>.

### **District Court Proceedings**

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<sup>1</sup> For a detailed account of the facts see *Jebco, Inc. v. Harrah's Operating Co.*, 587 F.3d 314 (5<sup>th</sup> Cir. 2009).

<sup>2</sup> *Id.*

On March 13, 2008, Jebco filed its petition in the Civil District Court for the Parish of Orleans alleging claims of breach of contract, breach of duty of good faith, breach of accounting and reporting obligations, and subrogation. Jebco specifically alleged that the defendants failed to abide by the terms of the Settlement Agreement, by failing to make payments to Jebco and provide an accounting for Jebco to account for Jebco's contractually protected position as a market participant in the Louisiana gaming industry. Further Jebco argues that Harrah's acted in bad faith by implementing a specific anticompetitive plan to divvy up that industry and lock Jebco out from further participation.

Pinnacle filed exceptions of no cause of action, no right of action and res judicata. Harrah's and Players filed exceptions of no cause of action. The matter was heard on January 29, 2010, whereby the district court granted the exceptions and dismissed Jebco's claims with prejudice. It is from this judgment Jebco brings the instant appeal.

### **Jebco's Assignments of Error**

Jebco maintains that the district court erred in (1) dismissing its claim for bad faith breach of contract, where Civil Code article 1983 requires that even the express contractual rights must be performed in good faith, and (2) dismissing Jebco's LUPTA claim, where there is no consumer/competitor restriction on who may bring a LUPTA claim, and where the defendant's performance of contractual obligations was in bad faith.

In order for this Court to thoroughly review Jebco's appeal, we must first decide if the district court erred in granting the appellees' exceptions of no cause of

action and no right of action<sup>3</sup> by determining whether the Settlement Agreement terminated after Hurricane Rita and if such termination was in bad faith.

### **Standard of Review**

In *Private Connection Property, Inc. v. Fox Cars, LLC*, 2008-1129, p.6 (La. App. 4 Cir. 2/10/09), 6 So.3d 866, 870-71, this Court reasoned:

We review the grant of the peremptory exception of no cause of action *de novo*. *Industrial Companies, Inc. v. Durbin*, 02-0665, p.6 (La.1/28/03), 837 So.2d 1207, 1213. The function of the peremptory exception of no cause of action is to question whether the law extends a remedy against the defendant to anyone under the factual allegations of the petition. The peremptory exception of no cause of action is designed to test the legal sufficiency of the petition by determining whether the particular plaintiff is afforded a remedy in law based on the facts alleged in the pleading. The exception is triable on the face of the petition and, for the purpose of determining the issues raised by the exception, the well-pleaded facts in the petition must be accepted as true.... Simply stated, a petition should not be dismissed for failure to state a cause of action unless it appears beyond doubt that the plaintiff can prove no set of facts in support of any claim which would entitle him to relief. Every reasonable interpretation must be accorded the language of the petition in favor of maintaining its sufficiency and affording the plaintiff the opportunity of presenting evidence at trial. [Citations omitted.]

La.Code Civ. Proc. art. 923 states that “[t]he function of the peremptory exception is to have the plaintiff’s action declared legally nonexistent, or barred by effect of law, and hence this exception tends to dismiss or defeat the action.” The objection of no right of action is a peremptory exception in which there is “no interest in the plaintiff to institute the suit.” La.Code Civ. Proc. art. 927(A)(6). “The function of an exception of no right of action is a determination of whether plaintiff belongs to a class of persons to whom the law grants the cause of action

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<sup>3</sup> The question of whether the exceptions were proper are incorporated in Jebco’s Issues for this Court’s review.

asserted in the petition.” *Badeaux v. Southwest Computer Bureau, Inc.*, 2005-0612, p. 6 (La.3/17/06), 929 So.2d 1211, 1217. The exceptor bears the burden of proof, and the no right of action exception assumes that the petition states a valid cause of action. *McLean v. Davie Shoring, Inc.*, 2007-0162, pp.7-8, 976 So.2d 733, 737; *Hospitality Consultants, LLC v. Angeron*, 2009-1738, p.6 (La. App, 4 Cir. 6/9/10) 41 So.3d 1236, 1240.

### **The Settlement Agreement**

The instant matter revolves around a lengthy, detailed Settlement Agreement executed between namely, but not limited to, Players Lake Charles, Inc., Jebco and Beeber on July 27<sup>th</sup>, 1995. Specifically, section 9(a) of the Agreement reads in part:

Term Residual Agreement: Effect of Agreement.

(a)Term. The provisions of the Agreement, and the determination of the rights, obligations and liabilities of the Parties pursuant hereto, shall be effective commencing on and as of the Operating Date, and shall continue in effect until its expiration on the earlier to occur of (i) voluntary or involuntary cessation of riverboat gaming operations by players (or by such successor or assign of Players who may have succeeded to Players rights and obligations under this Agreement) at the Premises or (ii) December 7, 2023.

On appeal Jebco argues that Harrah’s failed to take the slightest precautions to preserve and protect the riverboats and the downtown berth facilities and that Harrah’s exercised the termination-at-will provision in bad faith.

Harrah's argues that it had no obligation to continue at the Lake Charles berths after the storm and that it could cease operation there at any time.

The district court reasoned, "[t]he question comes down to an interpretation of the contract that exists between these parties and the way that this Court reads this contract is that Harrah's and Pinnacle had a right to voluntarily or involuntarily stop the attendant use of this property and did so as a result of damage to the vessel by Hurricane Rita and moved the vessel elsewhere so they no longer needed the land and the attendant use therefore is the land, and that because the contract terminated by its own terms..."

Generally, a contract, subject to interpretation on the four corners of the instrument without the necessity of extrinsic evidence, is interpreted as a matter of law. *Bartlett Constr. Co., Inc. v. St. Bernard Parish Council*, 99-1186, p. 6 (La.App. 4 Cir. 5/31/00), 763 So.2d 94, 98. The appellate standard of review with regard to contractual interpretations is as follows:

Where factual findings are pertinent to the interpretation of a contract, those factual findings are not to be disturbed unless manifest error is shown. However, when appellate review is not premised upon any factual findings made at the trial level, but is, instead, based upon an independent review and examination of the contract on its face, the manifest error rule does not apply. In such cases, appellate review of questions of law is whether the trial court was legally correct or legally incorrect. *Clinkscales v. Columns Rehabilitation and Retirement Center*, 08-1312, p. 3 (La.App. 3 Cir. 4/01/09), 6 So.3d 1033, 1035-1036.

When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. La. C.C. art. 2046. A provision in a contract susceptible of different meanings must be interpreted with a meaning that renders it effective and not one that renders it ineffective. La. C.C. art. 2049. Furthermore, each provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole. La. C.C. art. 2050. A doubtful provision must be interpreted in light of the nature of the contract, equity, usages, the conduct of the

parties before and after the formation of the contract, and of other contracts of a like nature between the same parties. La. C.C. art. 2053.

If, after examining the four corners of a contract, the contract is ambiguous, the agreement shall be construed according to the intent of the parties, which is to be inferred from all of the surrounding circumstances. *Derbes v. GBS Properties*, 04-1460, p. 5 (La.App. 5 Cir. 4/26/05) 902 So.2d 1109, 1111.

*New Orleans Jazz and Heritage Foundation, Inc. v. Kirksey*, 2009-1433, pp. 9-10 (La.App. 4 Cir. 5/26/10) 40 So.3d 394, 401-02.

We have reviewed the language in the Settlement Agreement and conclude that there is no ambiguity as to the term of the Agreement. The Settlement Agreement is too precisely detailed to make an inference outside of its four corners. It clearly states that the Agreement is to expire in 2023 or earlier by the voluntary or involuntary cessation of the riverboat. We can therefore also conclude that the damage to the riverboats due to Hurricane Rita involuntarily shut down the gaming operation; *or* we can conclude that because of the damage to the riverboats, Harrah's voluntarily ceased its gaming operation. Regardless, nowhere in the Settlement Agreement was Harrah's obligated to secure the riverboats, as suggested by Jebco. We find no breach of contract or bad faith by Harrah's in this regard.

Jebco offers the argument that the Purchase Agreement between Pinnacle and Harrah's on October 3, 2006, referencing the Settlement Agreement as one of seven "Assumed Contracts" somehow revives the Settlement Agreement. This argument is without merit.

Further Jebco alleges that selling the riverboats, along with their gaming licenses, to Pinnacle was an unfair trade practice. LSA-R.S. 51:1405(A), *Unfair acts or practices; interpretation and rulemaking authority*, states: "Unfair methods

of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful”. In this Court’s decision in *Philips v. Berner*, 2000-0103, pp. 9-10 (La.App. 4 Cir. 5/16/01), 789 So.2d 41, 48-49, we determined that the breach of contract claim between plaintiff and defendants was not grounded as a claim under LUTPA because it was not by a competitor or a consumer when LUPTA clearly applies to competitors or consumers.

### **Conclusion**

The Settlement Agreement is an unambiguous contract between the parties wherein the term of the Agreement is specifically defined. There is no factual or legal evidence supporting Jebco’s claims for breach of contract or bad faith. The contract terminated in 2005, there is no evidence to indicate that the cessation of the riverboat gaming in Lake Charles was done in bad faith. The mere fact that an unforeseen natural disaster caused the cessation of the riverboats was most likely a devastating occurrence for all of the parties involved. Further, we find that Jebco has no standing to pursue a claim under LUTPA.

### **Decree**

For the reasons above, we affirm the judgment of the district court dismissing Jebco, Inc.’s claims against Harrah’s Operating Company, Inc., Players LC, L.L.C, Players Riverboat II, L.L.C, and Pinnacle Entertainment, Inc..

**AFFIRMED**

