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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2022-2023

SC-2022-0808

Dream, Inc., d/b/a Frontier Bingo

v.

Tony Samuels

**Appeal from Greene Circuit Court
(CV-19-900060)**

STEWART, Justice.

Dream, Inc., d/b/a Frontier Bingo ("Frontier"), operates an electronic "bingo" facility located in Greene County. Frontier refused to

pay Tony Samuels \$30,083.88 that he purportedly won playing electronic "bingo" at Frontier's facility. Samuels initiated an action against Frontier in the Greene Circuit Court ("the trial court") alleging breach of contract and fraud. Following a jury trial, the trial court entered a judgment on the jury's verdict in favor of Samuels, ordering Frontier to pay Samuels \$500,000, and Frontier now appeals. Electronic "bingo" games, however, constitute illegal gambling in Alabama. Because Alabama will not enforce an illegal transaction, either in contract or in tort, we reverse the judgment and render a judgment in favor of Frontier.

Facts and Procedural History

On August 1, 2019, Samuels spent approximately 8 hours at Frontier's gaming facility in Greene County, during which time Samuels wagered a total of \$4,200 playing on approximately 4 different electronic gaming machines. To play electronic bingo at Frontier's facility, a player inserts funds into a game console and selects a game title to play. A player who inserts funds into a machine may play immediately, and Samuels described the machines at Frontier's facility as single-player consoles with no indication that the games are played jointly with other players. The display screen of each machine has a small depiction of a

bingo card, and a player may choose to "change" their bingo card prior to play. The machines, however, have the appearance of slot machines, and, like a slot machine, a player wins when certain symbols line up to form a winning line. A player may withdraw funds from a gaming machine by printing a ticket, which may be cashed out by the player or inserted into another gaming machine to transfer the funds to that machine.

Samuels testified that, after hours of playing, he accumulated combined winnings of \$30,083.88. When Samuels selected the option to "cash out" on the machine on which he had been playing, however, the machine's display began flashing a blue and green color pattern, and a technician was called to the machine. The technician caused the machine to print out a "handpay ticket" indicating that Samuels had won \$30,083.88. Frontier, however, refused to pay the amount reflected on the ticket, claiming that that amount exceeded the maximum payout amount and that Samuels's accumulated winnings were the result of a "malfunction."

On October 10, 2019, Samuels initiated this action, asserting a breach-of-contract claim and a fraud claim against Frontier based on its failure to pay the amount reflected on the "handpay ticket." A jury trial

was conducted on March 30, 2022. The jury returned a verdict in favor of Samuels and against Frontier in the amount of \$500,000, which included \$250,000 in compensatory damages and \$250,000 in punitive damages. On March 31, 2022, the trial court entered a judgment on the jury's verdict. Frontier filed a postjudgment motion on April 28, 2022, which was denied by operation of law on July 27, 2022. This appeal followed.

Analysis

On appeal, Frontier raises a litany of challenges to the judgment. Among other reasons, it challenges the sufficiency of the evidence as to liability and damages; it contends that the judgment was unconstitutionally excessive and subject to a remittitur; and it argues that the trial court exceeded its discretion in refusing to grant a brief continuance, which, it says, effectively prevented its expert witness from testifying at trial. First, however, we must address an issue not directly raised by the parties -- whether an Alabama court may aid in the enforcement of an illegal gambling contract.

"Electronic bingo is illegal in Alabama." State v. Epic Tech, LLC, [Ms. 1200798, Sept. 30, 2022] __ So. 3d __, __ (Ala. 2022) (emphasis

added). Article IV, § 65, of the Alabama Constitution prohibits "lotteries," "gift enterprises," and "any scheme in the nature of a lottery" and "stands as the constitutional bar ... to slot machines and all other forms of gambling in Alabama." State v. \$223,405.86, 203 So. 3d 816, 834 (Ala. 2016). Notwithstanding § 65's prohibition on "lotteries," local constitutional amendments have authorized "bingo" games in various counties, including Greene County. See Amendment No. 743, Ala. Const. 1901 (now Local Provisions, Greene County, § 32-7.00, Ala. Const. 2022). In Barber v. Cornerstone Community Outreach, Inc., 42 So. 3d 65, 86 (Ala. 2009) ("Cornerstone"), this Court held that the term "bingo" as used in such local amendments refers only to "the game commonly or traditionally known as bingo," which necessarily includes the following characteristics:

"1. Each player uses one or more cards with spaces arranged in five columns and five rows, with an alphanumeric or similar designation assigned to each space.

"2. Alphanumeric or similar designations are randomly drawn and announced one by one.

"3. In order to play, each player must pay attention to the values announced; if one of the values matches a value on one or more of the player's cards, the player must physically act by marking his or her card accordingly.

"4. A player can fail to pay proper attention or to properly mark his or her card, and thereby miss an opportunity to be declared a winner.

"5. A player must recognize that his or her card has a 'bingo,' i.e., a predetermined pattern of matching values, and in turn announce to the other players and the announcer that this is the case before any other player does so.

"6. The game of bingo contemplates a group activity in which multiple players compete against each other to be the first to properly mark a card with the predetermined winning pattern and announce that fact."

42 So. 3d at 86. Furthermore, the above criteria apply even when a local amendment, such as Amendment No. 743, permits the use of an "electronic card marking machine" in lieu of a paper card. State v. 825 Elec. Gambling Devices, 226 So. 3d 660, 671 (Ala. 2016).

In applying our decision in Cornerstone, this Court has repeatedly held that electronic-bingo machines similar to those played by Samuels in this case do not constitute "the game commonly or traditionally known as bingo" and, therefore, constitute illegal gambling. See Epic Tech, __ So. 3d at __; State v. 825 Elec. Gambling Devices, 226 So. 3d at 671-72; Macon Cnty. Greyhound Park, Inc. v. Hoffman, 226 So. 3d 152, 166-67 (Ala. 2016); State v. \$223,405.86, 203 So. 3d at 842; Houston Cnty. Econ. Dev. Auth. v. State, 168 So. 3d 4, 14 (Ala. 2014); Ex parte State, 121 So.

3d 337, 348 (Ala. 2013); Riley v. Cornerstone Community Outreach, Inc., 57 So. 3d 704, 734 (Ala. 2010). Here, we need not address the Cornerstone factors in depth. Based on the testimony and exhibits offered at trial, the electronic-bingo machines operated by Frontier and played by Samuels clearly did not meet all the criteria set forth in Cornerstone. As such, Samuels's claims arise from illegal gambling activity.

Both parties in this case contend that Samuels's playing of the electronic-bingo machines gave rise to a gambling contract.¹ Alabama courts, however, will not enforce a void or illegal contract. In Rape v. Poarch Band of Creek Indians, 250 So. 3d 547 (Ala. 2017), a case also

¹Although Frontier admits the existence of an implied gambling contract, it contends that it did not violate the rules of wager associated with that contract, which terms voided "all pays and plays" associated with a machine malfunction. In support of its argument, Frontier cites Macon County Greyhound Park, Inc. v. Knowles, 39 So. 3d 100 (Ala. 2009). In Knowles, this Court noted that the parties in that case had agreed that the electronic-bingo machines in question complied with the local constitutional amendment authorizing bingo and, therefore, concluded that the issue of illegality of the machines was not presented in that case. 39 So. 3d at 107 n.1. Knowles, however, predates our decision in Cornerstone and its extensive progeny. The "illegality of electronic bingo in Alabama is [now] well established." Macon Cnty. Greyhound Park, Inc. v. Hoffman, 226 So. 3d 152, 167 (Ala. 2016).

concerning the legality of electronic-bingo games in Alabama, this Court explained:

"It is well established that this Court will not aid a plaintiff seeking to recover under an illegal contract but, instead, will simply leave the parties where it finds them. Thus, in Thompson v. Wiik, Reimer & Sweet, 391 So. 2d 1016 (Ala. 1980), this Court affirmed the trial court's order dismissing the plaintiff's claims and explained:

"'As a general principle, a party may not enforce a void or illegal contract either at law or in equity. 17 C.J.S. Contracts § 272, pp. 1188-95 (1963).

"'The effect of the illegality of a contract is summarized in Corpus Juris Secundum:

"'"No principle of law is better settled than that a party to an illegal contract cannot come into a court of law and ask to have his illegal objects carried out; nor can he set up a case in which he must necessarily disclose an illegal purpose as the groundwork of his claim. The rule is expressed in the maxims, Ex dolo malo non oritur actio, and In pari delicto potior est conditio defendentis. The law in short will not aid either party to an illegal agreement; it leaves the parties where it finds them."

"'17 C.J.S. Contracts § 272, p. 1188 (1963).'

"391 So. 3d at 1020.

""[C]ontracts specially prohibited by law, or the enforcement of which violated a law, or the making of which violated the law ... [are] void and nonenforceable ... (and) Whenever a party requires the aid of an illegal transaction to support his case, he cannot recover.'" Lucky Jacks Entm't Ctr., LLC v. Jopat Bldg. Corp., 32 So. 3d 565, 569 n.3 (Ala. 2009) (quoting Bankers & Shippers Ins. Co. of New York v. Blackwell, 255 Ala. 360, 366, 51 So. 2d 498, 502 (1951), quoting in turn Ellis v. Batson, 177 Ala. 313, 318, 58 So. 193, 194 (1912)). See, e.g., Macon Cty. Greyhound Park, Inc. v. Hoffman, 226 So. 3d 152, 167 (Ala. 2016) (declining to provide requested relief because '[t]his Court has repeatedly held that electronic-bingo games, such as those at issue in these cases, constitute illegal gambling in Alabama' and, '[a]ccordingly, the arbitration provision itself would constitute a void contract because it is, at least in part, based on illegal gambling consideration').

"And as indicated, this principle applies whether the claim framed by a plaintiff sounds in contract or in tort; either way, a plaintiff cannot recover on a claim that depends upon or requires the aid of an illegal contract. Ingraham v. Foster, 31 Ala. 123, 127 (1857) (fraud claim). "Related claims based on causes of action other than contract, including negligence, also cannot be pursued if they arise out of the performance of the illegal contract.'" King v. Riedl, 58 So. 3d 190, 195 (Ala. Civ. App. 2010) (quoting IPSCO Steel (Alabama), Inc. v. Kvaerner U.S., Inc., (No. Civ. A. 01-0730-CG-C, May 25, 2005) (S.D. Ala. 2005) (not reported in F. Supp. 2d)). See also White v. Miller, 718 So. 2d 88, 90 (Ala. Civ. App. 1998) (disallowing claims for 'fraud and deceit' grounded in an illegal contract).

"A person cannot maintain a cause of action if, in order to establish it, he must rely in whole or in part on an illegal or immoral act or transaction to which he is a party. 1 Corpus Juris Secundum, Actions, page 996, § 13; 1 Corpus Juris, page 957, § 52. An analogy is presented with respect to an

illegal contract, where the plaintiff fails if, in order to prove his case, he must resort to such contract. 13 Corpus Juris, page 503, [§] 445, 17 C.J.S., Contracts, § 276. These principles apply whether the cause of action is in contract or in tort. 1 Corpus Juris Secundum, Actions, page 999, § 13.'

"Hinkle v. Railway Express Agency, 242 Ala. 374, 378, 6 So. 2d 417, 421 (1942). ... '[S]uch a rule derives principally ... ["]from a desire to see that those who transgress the moral or criminal code shall not receive aid from the judicial branch of government.'" Oden v. Pepsi Cola Bottling Co. of Decatur, 621 So. 2d 953, 955 (Ala. 1993) (quoting Bonnier v. Chicago, B&O R.R., 351 Ill. App. 34, 51, 113 N.E. 2d 615, 622 (1953))."

250 So. 3d at 562-63.

Furthermore, § 8-1-150(a), Ala. Code 1975, provides that "[a]ll contracts founded in whole or in part on a gambling consideration are void."

"'In § 8-1-150(a), Ala Code 1975, the Legislature has clearly articulated the position of the State of Alabama on gambling: "All contracts founded in whole or in part on a gambling consideration are void." The language could hardly be more explicit. The statute declares that "[a]ll contracts," not just some, are "void," not voidable, if those contracts are founded "in whole or in part on a gambling consideration."'"

Hoffman, 226 So. 3d at 161 (quoting Johnson v. Jefferson Cnty. Racing Ass'n, Inc., 1 So. 3d 960, 970-71 (Ala. 2008) (Parker, J., concurring in part and dissenting in part)).

In Hoffman, this Court reviewed three separate cases, each arising from an electronic-bingo operator's alleged failure to pay a jackpot. In each case, the electronic-bingo operator moved to compel arbitration based on an arbitration provision stated in the "official bingo rules," and in each case that motion was denied. On appeal, this Court concluded that the arbitration provisions at issue could not be enforced because they were part of void and illegal contracts founded on gambling consideration:

"[T]he entire subject matter of the 'contracts' at issue in these cases is patently illegal conduct -- illegal gambling. ... [T]his Court has repeatedly held that ... electronic-bingo games, such as the one in question, constitute illegal gambling. Further, § 8-1-150 specifically provides that contracts that are based in whole or in part on gambling consideration are void."

226 So. 3d at 168.

Moreover, this Court has stated that illegality is such a "fundamental" defect "that we may raise the issue ex mero motu." Rape, 250 So. 3d at 563.

"It is the rule ... in Alabama ... to not enforce a contract in violation of the law and to deny the plaintiff the right to recover upon a transaction contrary to public policy, even if the invalidity of the contract or transaction be not specially pleaded and is developed by the defendant's evidence."

Brown v. Mountain Lakes Resort, Inc., 521 So. 2d 24, 26 (Ala. 1988) (quoting National Life & Accident Ins. Co. v. Middlebrooks, 27 Ala. App. 247, 249, 170 So. 84, 86 (1936), quoting in turn Shearin v. Pizitz, 208 Ala. 244, 246, 94 So. 92, 93 (1922)).

Here, Samuels's claims are founded upon illegal gambling activity. Epic Tech, ___ So. 3d at ___. As explained above, Alabama courts will not enforce claims, whether in contract or in tort, which require the aid of an illegal agreement.² Hoffman, 226 So. 3d at 168. Furthermore, we will recognize such a defect ex mero motu. Rape, 250 So. 3d at 563. Accordingly, the judgment of the trial court entered on the jury's verdict is reversed, and a judgment is rendered for Frontier on Samuels's claims against it. We pretermitt consideration of the other issues raised on appeal.

Conclusion

For the reasons discussed above, we reverse the judgment of the trial court and render a judgment for Frontier.

²Electronic bingo players are not totally without a remedy. Section 8-1-150(a), Ala. Code 1975, provides that "[a]ny person who has paid any money or delivered any thing of value lost upon any game or wager may recover such money, thing, or its value by an action commenced within six months from the time of such payment or delivery."

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REVERSED AND JUDGMENT RENDERED.

Parker, C.J., and Shaw, Wise, Bryan, Mendheim, Mitchell, and
Cook, JJ., concur.

Sellers, J., concurs in the result.