



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ROBERT W. PALESE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 1546-N
	:	
DELAWARE STATE LOTTERY	:	
OFFICE, its employees, agents and/or	:	
servants, WAYNE LEMONS, Director,	:	
	:	
Defendants.	:	

MEMORANDUM OPINION AND ORDER

Date Submitted: March 16, 2006
Date Decided: June 29, 2006

Antonia S. Bevis, Esquire and Patrick Collins, Esquire of Ferrara Haley & Bevis,
Wilmington, Delaware, Attorneys for Plaintiff.

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Justice, Wilmington, Delaware, Attorneys for Defendants.

NOBLE, Vice Chancellor

I. FACTUAL BACKGROUND

On March 21, 2003, Robert W. Palese (“Palese”) bought five Delaware State Lottery tickets from a liquor store in Newark, Delaware.¹ To select his numbers for the games, Palese used a “play slip” that contained five game panels.² Each panel had a selection grid with numbers one through thirty-eight, and Palese chose six numbers from each of these grids by manually filling in the grids.³ After purchasing the tickets, Palese placed them in his pants pocket and returned home.⁴

Several days later, Palese learned that someone had won the March 21, 2003 lottery, but that the winner had not yet come forward.⁵ He searched for his ticket to see if he had selected the winning numbers, but was unable to find it.⁶ Eventually, he remembered that he had done laundry the evening he purchased the ticket; thus he concluded that the ticket—which had been left in his pants pocket—had probably been destroyed in the wash.⁷

¹ Compl. ¶ 9.

² Compl. ¶ 9.

³ Compl. ¶ 13.

⁴ Pl.’s Ans. Br. at Ex. F (Letter from Palese to Lottery Office, Mar. 31, 2004). Generally, on a motion to dismiss, the Court may only consider facts alleged in the complaint. *In re GM (Hughes) S’holder Litig.*, 2006 WL 722198, at *3 (Del. Mar. 20, 2006). However, “in some instances and for carefully limited purposes, it may be proper for a trial court to decide a motion to dismiss by considering documents referred to in a complaint. The trial court may also take judicial notice of matters that are not subject to reasonable dispute.” *Id.* Thus, the Court may consider Palese’s letter, because, although he submitted it with his Answering Brief, the document was referenced in detail in the Complaint. Compl. ¶ 19.

⁵ Pl.’s Ans. Br. at Ex. F.

⁶ *Id.*

⁷ *Id.*

Although the lottery ticket was gone, Palese still possessed the play slip he used when he purchased the ticket.⁸ He checked the numbers on the play slip and discovered that the numbers he selected on the play slip's fifth game panel—9, 13, 19, 24, 27, and 35—were the winning numbers for the March 21, 2003 lottery.⁹

Palese, although lacking the winning lottery ticket, did not lose hope. He posited that the play slip would be sufficient to claim the prize.¹⁰ After all, the play slip contained five game panels, each with a different six-number combination selected.¹¹ He figured that the Lottery Office had the technology to verify his purchase with the store's records, which would reflect that the winning ticket had been purchased simultaneously with four additional tickets.¹² The numbers on Palese's play slip would match the numbers selected for not only the winning game, but also the four other games played along with it.¹³ He believed that the statistical significance of picking not only the winning six-number combination on the play slip, but also the six-number combinations for the four additional tickets, would satisfy the Lottery Office that he had selected the winning numbers, and he would be awarded the prize money.

⁸ *Id.*

⁹ *Id.*

¹⁰ Compl. ¶ 13.

¹¹ Compl. ¶ 13.

¹² Compl. ¶ 13.

¹³ Compl. ¶ 13.

Palese described his predicament in a letter to the Lottery Office.¹⁴ He was advised that he would need to wait one year “before the Lottery can even review your claim. If no other claims are made to this winning prize by March 21, 2004, the Lottery will then determine whether it has the legal authority under the Lottery laws and regulations to consider your letter claiming the winning prize.”¹⁵

About eleven months later, Palese read in the newspaper that the unclaimed lottery jackpot had been transferred to the State’s General Fund.¹⁶ Palese immediately contacted the Lottery Office.¹⁷ He was asked to provide further information about the ticket he purchased and how it had been destroyed.¹⁸ Palese complied and again explained that, although the ticket itself had been inadvertently destroyed in the laundry, he still had the play slip.¹⁹

According to the Lottery Office, however, Palese needed to produce the actual winning ticket.²⁰ Wayne Lemons (“Lemons”), Director of the Delaware State Lottery Office, denied Palese’s claim on April 13, 2004:

¹⁴ Compl. ¶ 11.

¹⁵ Pl.’s Ans. Br. at Ex. C (Letter from Lottery Office to Palese (undated)). The substance of this letter was fully developed in the Complaint, Compl. ¶ 14, and thus may be considered by the Court in its analysis. *See supra* note 4.

¹⁶ Compl. ¶ 16. By 29 *Del.C.* § 4812, unclaimed prizes revert to the State Lottery Fund after one year. Surplus funds in the State Lottery Fund are remitted to the State’s General Fund in accordance with 29 *Del.C.* § 4815(a).

¹⁷ Compl. ¶ 17.

¹⁸ Compl. ¶ 18.

¹⁹ Pl.’s Ans. Br. at Ex. F.

²⁰ Compl. ¶ 21.

Under Delaware Lottery Laws and Regulations, the claimant of a Lottery prize is required to produce the actual winning ticket. 29 *Del.C. §4805(a)(5); Lottery Regulation 11-Lottery Tickets; Lottery Regulation 18-Procedure for Claiming Prizes; Lottery Regulation 19-Ownership of Lottery Tickets*. Since you are unable to produce the ticket from the Lottery drawing in question, your claim is denied.²¹

Palese requested a hearing pursuant to the Lottery Rules.²² The hearing was held on July 27, 2004, but the Lottery Office terminated the hearing because Palese had no new evidence to present.²³ Following the hearing, Lemons affirmed the decision to deny Palese's claim.²⁴ Implicit in his decision was the Lottery Office's view that a person seeking to collect the prize must hold the winning ticket.

On February 14, 2005, Palese sought relief in the Superior Court. He voluntarily dismissed that action without seeking to transfer to this Court and, on August 5, 2005, filed this action against the Defendants, Lemons and the Delaware State Lottery Office.

II. CONTENTIONS

In his Complaint, Palese alleges that the actions of the Defendants resulted in unjust enrichment to the State when the lottery prize accrued to the State's

²¹ Pl.'s Ans. Br. at Ex. G (Letter from Lottery Office to Palese, Apr. 13, 2004). The principal contents of this letter were set forth in the Complaint, Compl. ¶ 21, and thus may be considered by the Court in its analysis. *See supra* note 4.

²² Compl. ¶ 22.

²³ Compl. ¶ 22. Palese has informed the Court that he was not permitted to question Lemons during the administrative hearing, but he has not alleged any violation of his procedural due process rights; because Palese has not formally raised such claims in this action, the suggested inadequacy of the administrative hearing is not considered by the Court. Moreover, Palese has not predicted any outcome or benefit that would have resulted from such questioning.

²⁴ Compl. ¶ 23.

General Fund.²⁵ Additionally, he charges Defendants with breach of the implied duty of good faith and fair dealing.²⁶ Finally, he invokes the correspondence from the Lottery Office as an independent source of relief.

The Defendants have moved to dismiss this action under Court of Chancery Rule 12(b)(1), contending that this Court lacks subject matter jurisdiction, and under Court of Chancery Rule 12(b)(6), asserting that Palese has failed to state a claim for which relief can be granted.²⁷

III. ANALYSIS

A. *The Applicable Standard*

In deciding a motion to dismiss, the Court “must accept as true all of the well-pleaded allegations of fact and draw reasonable inferences in the plaintiff’s favor.”²⁸ If the Court determines with reasonable certainty that there is no set of facts which would entitle the plaintiff to relief, the motion to dismiss will be granted.²⁹

²⁵ Compl. ¶ 25.

²⁶ Compl. ¶ 28.

²⁷ Defs.’ Mtn. to Dismiss at 1. Because Palese seeks equitable relief in the form of imposition of a constructive trust and disgorgement of an unjustly retained benefit (among other remedies), the Court is satisfied that subject matter jurisdiction exists. Accordingly, the remainder of this memorandum opinion addresses the Defendants’ motion to dismiss under Rule 12(b)(6).

²⁸ *Hughes*, 2006 WL 722198, at *3.

²⁹ *Id.* For purposes of this motion to dismiss, the Court accepts that Palese purchased the winning lottery ticket and that the ticket was inadvertently destroyed in the wash.

B. *The Governing Law*

1. The Lottery Exception

The Delaware Constitution of 1897 contained a general prohibition against gambling.³⁰ In 1973, Article II was amended to permit, among other exceptions, a state-operated Lottery (“the Lottery Exception”).³¹ Within a few months, enabling legislation (the “Lottery Act”)³² was passed which created the State Lottery Office and the position of Director of the State Lottery Office.³³ The Lottery Act delegated to the Director the authority “to promulgate such rules and regulations governing the establishment and operation of the lottery.”³⁴ Accordingly, the “Lottery Rules and Regulations” were promulgated.³⁵ The Court is guided by these three sources, the Lottery Exception to Article II, the Lottery Act, and the Lottery Rules and Regulations, in its consideration of Defendants’ Motion to Dismiss.

The Lottery Exception contained in Art. II, § 17 prohibits all forms of gambling, with limited exceptions. One of those exceptions encompasses

³⁰ See *Opinion of the Justices*, 385 A.2d 695, 700 (Del. 1978) (“The original 1897 version of Art. II, § 17 provided: ‘Lotteries, the sale of lottery tickets, pool selling and all other forms of gambling are prohibited in this State. The General Assembly shall enforce this section by appropriate legislation.’”).

³¹ 59 Del. Laws Ch. 143. See generally *Opinion of the Justices*, 385 A.2d at 706.

³² 29 Del.C. Ch. 48.

³³ *Opinion of the Justices*, 385 A.2d at 706.

³⁴ 29 Del.C. § 4805.

³⁵ The Lottery Rules and Regulations (the “Lottery Regulations”) may be found at 31-300-001 DEL. CODE REGS. (Weil 2006).

“[l]otteries under State control for the purpose of raising funds.”³⁶ The Article does not address the requirement of possessing the actual ticket or discuss any other prize redemption procedures, but it provides a foundation for the Court’s consideration of the enabling legislation that followed the ratification of the Lottery Exception.

With this background, the Court turns its analysis to the laws and regulations spawned by the Lottery Exception: the Lottery Act and the Lottery Rules and Regulations. As explained below, both of these sources require production of the winning ticket before the prize money may be paid.³⁷

2. The Lottery Act

The Lottery Act charges the Director to prescribe rules and regulations designed to:

[P]rovide for all matters necessary or desirable for the efficient and economical operation and administration of the system and for the convenience of the purchasers of lottery tickets and the *holders* of winning tickets, . . . including, but not limited to, the following:

(5) Manner of payment of prizes to the *holders* of winning tickets.

. . . .

(11) Apportionment of the total revenues accruing from the sale of tickets among:

³⁶ Del. Const. Art. II, § 17.

³⁷ This case does not, of course, involve a dispute among several purchasers of a ticket that is presented for payment.

a. Payment of prizes to the *holders* of winning tickets;

.....

(12) Such other matters necessary or desirable for the efficient and economical operation and administration of the game and for the convenience of the purchasers of tickets and the *holders* of winning tickets.³⁸

These provisions evince the Legislature’s intention for the payment of prize money to be conditioned upon presentation of the winning ticket. In all instances where the payment of prizes is discussed, the text explicitly refers to “holders of winning tickets.” More importantly, it does so exclusively—payment to non-ticket holders is not contemplated by the statute. Under the doctrine of *expressio unius est exclusio alterius*—the expression of one thing is the exclusion of the other—the Court presumes that the General Assembly intended to limit payment of prize money to winning ticket holders.³⁹

3. The Lottery Regulations

Pursuant to its mandate under the Lottery Act, the Lottery Office has promulgated rules and regulations that set forth the procedures for claiming prizes. These rules advance the Lottery Act’s directive that payment of prizes be made to holders of winning tickets. As stated in Lottery Regulation 18, “[a]ll winning tickets will be validated. A winning ticket must not be counterfeit in whole or in

³⁸ 29 *Del.C.* § 4805 (emphasis added).

³⁹ *See, e.g., Priest v. State*, 879 A.2d 575, 584 (Del. 2005).

part and *must be presented* by a person authorized to play the Lottery.” Furthermore, Lottery Regulation 11.3 provides that the Lottery “shall not be responsible for lost, stolen, or mutilated tickets after sale of same to the public.” Finally, under Lottery Regulation 19, “a lottery ticket which has been sold shall be owned by the *physical possessor* of said ticket.”⁴⁰

The Court is not at liberty to stretch the meaning of the rules beyond the plain-language used, no matter how compelling the circumstances.

Where the language of a statute [or, as in this instance, a regulation] is plain, and conveys a clear and definite meaning, construction is forbidden, even though other meanings could be found. In such case the court will accept the language as it finds it. It will not exercise its imagination in an effort to discover some obscure, uncertain or merely possible meaning, but will give the language the meaning clearly demanded by it.⁴¹

Thus, in accordance with the Lottery Regulations, the winning ticket must be presented in order to claim the prize.

C. The Relationship between Palese and the Lottery Office

By purchasing a lottery ticket, Palese entered into a contractual relationship with the Lottery Office, one evidenced, in the first instance, by the lottery ticket.

⁴⁰ Emphasis added.

Lottery Regulation 18 authorizes the Director to “establish and modify procedures by which prizes may be claimed and paid.” Because the enabling statute instructs the Director to determine the “manner of payment to the *holders* of winning tickets,” 29 *Del.C.* § 4805 (emphasis added), it may be beyond the Director’s authority—and belie legislative intent—to adopt procedures that would allow the award of prize money without presentment of the ticket. Whether the Director could adopt such rules, of course, is not before the Court. What is important for present purposes is that he has not.

⁴¹ *Hartford Accident & Indem. Co. v. W.S. Dickey Clay Mfg. Co.*, 24 A.2d 315, 320 (Del. 1942).

The majority rule in American jurisprudence is that “[t]he relationship between a lottery ticket holder and the state lottery agency is primarily contractual in nature, and the . . . purchase of a ticket in the proper manner constitutes acceptance of an offer, forming a binding contract.”⁴² The text on the back of the lottery ticket placed Palese on notice that his rights as player of the lottery would be subject to the following terms:

This ticket is a bearer instrument, therefore you should sign your ticket for safety. Valid only for date(s) shown. *Determination of winners and transactions are subject to Delaware State Lottery laws, rules, regulations and directives.* Void if mutilated, altered illegible or incomplete. Not responsible for torn or stolen tickets.⁴³

The ticket unequivocally stated that the right to payment is controlled by applicable laws and regulations (which, as discussed above, restrict payment of prizes to holders of winning tickets). Furthermore, the purchaser is advised to sign the back of the ticket because it is a “bearer instrument,” meaning it is “payable to the person who holds it rather than to the order of a specific person.”⁴⁴ Just as the Court is bound to honor the plain language of the Lottery Act, it also must honor the express terms of the parties’ agreement.

⁴² 1 ARTHUR L. CORBIN, ET AL., CORBIN ON CONTRACTS § 3.10 (Joseph M. Perillo, ed., rev. ed. 1993 & Supp. 2004) (quoting *Brown v. Wisconsin*, 602 N.W. 2d 795 (Wis. 1999)).

⁴³ Defs.’ Opening Br. at 10 (emphasis added). Although the words on the back of the ticket were not recited in the Complaint, the ticket was otherwise referenced in the Complaint and the words are not subject to reasonable dispute. See *supra* note 4.

⁴⁴ BLACK’S LAW DICTIONARY 1142 (8th ed. 2004).

It is the duty of the court to construe agreements as they are made by the parties and to give to language that is clear, simple and unambiguous the force and effect which the language clearly demands. The court may not, in the guise of interpreting the contract, make for the parties a better agreement than they themselves have been satisfied to make by affording to a party a measure of protection which the contract does not cover.⁴⁵

Under the plain language of the parties' agreement, which Palese consented to when he purchased the ticket, payment of prize money is restricted to winning ticket holders.⁴⁶

Accordingly, under the applicable laws and regulations and the express terms governing participation in the lottery, prizes may not be paid in the absence of the winning ticket.

D. *Analysis of Palese's Claims*

1. Unjust Enrichment

In Count I of the Complaint, Palese alleges that the State has been unjustly enriched by retaining a benefit to his detriment. He asks the Court to impose a quasi-contractual duty upon the Defendants to pay the, allegedly, unjustly retained prize to him. The appropriate remedy, according to Palese, is the imposition of a constructive trust.

⁴⁵ *Van Brunt v. Peninsula United Methodist Homes, Inc.*, 1987 WL 7953, at *4 (Del. Ch. Mar. 16, 1987) (internal quotations omitted).

⁴⁶ Furthermore, even if the ticket did not expressly state that the Lottery Act and the Lottery Regulations applied, or if it did so insufficiently, the laws and regulations would nonetheless be given their full effect, because existing and applicable laws implicitly form a part of every contract. See *Koval v. Peoples*, 431 A.2d 1284, 1285 (Del. Super. 1981). See also *Norfolk & W. Ry. Co. v. Am. Train Dispatchers' Ass'n*, 499 U.S. 117, 130 (1991).

Unjust enrichment is the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. Courts developed unjust enrichment, or quasi-contract, as a theory of recovery to remedy the absence of a formal contract. A party cannot seek recovery under an unjust enrichment theory if a contract is the measure of the plaintiff's right.⁴⁷

Palese is precluded from prevailing on his claim for unjust enrichment because a binding contract exists between the parties that addresses the particular subject matter—the procedure for claiming the prize money. Because an enforceable contract exists between the parties and that contract requires presentment of the ticket, Palese's claim for unjust enrichment must be dismissed.⁴⁸

Even if the express terms established under the contractual relationship between Palese and the Lottery Office were not dispositive, Palese would

⁴⁷ *ID Biomedical Corp., v. Tm Techs., Inc.*, 1995 WL 130743, at *15 (Del. Ch. Mar. 16, 1995) (internal citations omitted). This analysis is predicated upon a valid and enforceable contract, one not, for example, procured by fraud or other overreaching or improper conduct. *Compare Breakaway Solutions, Inc. v. Morgan Stanley & Co.*, 2004 WL 1949300, at *15 (Del. Ch. Aug. 27 2004) (“While the existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter, there are situations where alternative pleading is allowed under both theories. This is generally so, however, only when there is doubt as to the enforceability or meaning of the terms of the contract in question.”) (internal quotations omitted) (applying New York law).

⁴⁸ *See, e.g., Albert v. Alex. Brown Mgmt. Servs.*, 2005 WL 2130607, at *8 (“Courts generally dismiss claims for *quantum meruit* on the pleadings when it is clear from the face of the complaint there exists an express contract that controls.”). For a helpful discussion of this issue, see RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT (TENTATIVE DRAFT NO. 3) INTRODUCTORY NOTE, Ch. 4, Reporter's Note (2004). Furthermore, there is nothing oppressive about a requirement—one that is known or should be known—that, to win a lottery, one must hold the winning ticket.

nonetheless be denied the equitable relief he seeks under the doctrine of unjust enrichment. To recover for unjust enrichment, a plaintiff must demonstrate: “(1) an enrichment, (2) an impoverishment, (3) a relation between the enrichment and impoverishment, (4) the absence of justification and (5) the absence of a remedy provided by law.”⁴⁹ The facts, as alleged by Palese, could support no such a finding here. As explained, *supra*, under governing Delaware law, only persons with a winning ticket are eligible to receive the prize money. The Defendants denied Palese’s claim based on their interpretation—which the Court accepts—that the Delaware lottery laws and regulations require presentation of the winning ticket.⁵⁰ As a consequence, not only is his claim defeated by a controlling contract term, it also is deficient because the Defendants’ conduct was not “absent of justification”; on the contrary, the Defendants acted within the bounds of their prescribed legal authority and in conformity with the governing statute and

⁴⁹ *Oliver v. Boston Univ.*, 2000 WL 1091480, at * 9 (Del. Ch. July 18, 2000) (quoting *Cantor Fitzgerald, L.P. v. Cantor*, 724 A.2d 571, 585 (Del. Ch. 1998)).

⁵⁰ This dispute also involves an agency’s interpretation of its rules and regulations. As a general matter, courts will grant some deference to an agency’s interpretation of its rules and regulations.

Although the interpretation of a regulation is ultimately a question of law for a court to decide, substantial weight and deference is accorded to the construction of a regulation enacted by an agency which is also charged with its enforcement. This deference is reflected in the standard of judicial review that an administrative agency’s interpretation of its rules and regulations will not be reversed unless clearly erroneous.

State Farm Mut. Auto. Ins. Co. v. Mundorf, 659 A.2d 215, 220 (Del. 1995). The Court’s interpretation of the Lottery Regulations, however, is not dependent upon any deference accorded to Lottery Office’s views. *See supra* note 41 and accompanying text.

regulations.⁵¹ Thus, Palese’s claim under the doctrine of unjust enrichment must be dismissed.⁵²

2. Breach of the Covenant of Good Faith and Fair Dealing

Count II of the Complaint alleges that the Defendants breached the duty of good faith and fair dealing owed to Palese. Under Delaware law, every contract includes an implied covenant of good faith and fair dealing—a promise of “faithfulness to an agreed common purpose and consistency with the justified expectations of the other party.”⁵³

As noted, the purchase of a lottery ticket creates a contractual relationship between the purchaser and the Lottery Office.⁵⁴ The ticket unequivocally

⁵¹ In other jurisdictions, similar actions against state lotteries have been unsuccessful because the controlling legislation restricted payment to holders of winning tickets. *See, e.g., Karafa v. New Jersey State Lottery Comm’n*, 324 A.2d 97 (N.J. Super. 1974).

⁵² Palese also seeks the remedy of imposition of a constructive trust. To the extent that an equitable trust may be available in the absence of unjust enrichment, it should be noted that, as a general matter, a constructive trust may be awarded where “one party, by virtue of fraudulent, unfair or unconscionable conduct, is enriched at the expense of another to whom he or she owes some duty. . . . Some fraudulent or unfair and unconscionable conduct is essential.” *Hogg v. Walker*, 622 A.2d 648, 652 (Del. 1993). *See also* DONALD J. WOLFE, JR. & MICHAEL A. PITTENGER, CORPORATE & COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY § 12-7[b] (2006). The facts, as alleged, would not support any inference that such conduct occurred here. As explained, *supra*, under governing Delaware law, prize money may only be awarded to winning ticket holders. Thus, the Defendants’ conduct was not “fraudulent, unfair, or unconscionable.”

The Lottery Office did nothing to defeat any right or, indeed, any expectation of Palese because, until the lottery ticket was presented, Palese could not have satisfied the condition imposed upon a participant in the lottery of presenting the winning ticket. Palese’s effort to fit his allegations within the unjust enrichment doctrine, admittedly a doctrine of substantial flexibility, is awkward because the problem is of his own making and the Lottery Office not only did nothing wrong, it also did nothing for which it could be fairly criticized.

⁵³ *Corp. Prop. Assocs. 6 v. Hallwood Group, Inc.*, 792 A.2d 993 (Del. Ch. 2002).

⁵⁴ *See supra* note 42 and accompanying text.

establishes that the right to payment is controlled by applicable laws and regulations (which, as discussed above, restrict payments of prizes to holders of winning tickets).

Palese insists that had the Lottery further investigated his purchase, the records from the store where he purchased the ticket would have proven that he indeed selected the winning numbers and, at one time, held the winning ticket. However, the Court cannot impose upon the Defendants this additional duty, because the contract, as well as statutory law, decidedly occupies the field.

To state a claim for breach of an implied covenant of good faith and fair dealing, a plaintiff must identify a specific implied contractual obligation. The cardinal guiding principle in adjudicating a contract claim is to give effect to the intention of the contracting parties. Implied contractual obligations are terms that clearly would have been included in the contract had the parties negotiated with respect to them. Courts will not readily imply a contractual obligation where the contract expressly addresses the subject of the alleged wrong, yet does not provide for the obligation that is claimed to arise by implication.⁵⁵

Here, the subject of the alleged wrong (i.e., procedures for claiming prize money) was expressly addressed in the parties' agreement. Furthermore, the Lottery Regulations (which are explicitly part of the parties' agreement) set forth the procedures for collecting prize money and require presentation of the winning ticket. The implied duty of good faith and fair dealing was not breached because

⁵⁵ *Moore Bus. Forms v. Cordant Holdings Corp.*, 1995 WL 662685, at *8 (Del. Ch. Nov. 2, 1995). See *Dunlap v. State Farm Fire and Cas. Co.*, 878 A.2d 434, 440-45 (Del. 2005); *Frontier Oil Corp. v. Holly Corp.*, 2005 WL 1039027, at *28 (Del. Ch. Apr. 29, 2005) (“The Court, of course, may not substitute its notions of fairness [through invoking the covenant of good faith and fair dealing] for the terms of [the parties’ agreement].”).

the Defendants' actions conformed to the express terms of the contract, as well as the applicable statutes and regulations.⁵⁶

3. The Lottery Office's Commitment to Investigate

The Defendants' conduct in response to Palese's claim does not entitle Palese to receive the proceeds. After Palese initially contacted the Lottery Office, he was advised that the Lottery Office would not be able to review his claim until one year after the drawing.⁵⁷ According to Palese, that changed everything, because it was an affirmative promise that the Lottery Office would investigate Palese's claim.

Assuming that the letter set forth an enforceable promise under which the Lottery Office pledged to review Palese's claim, the alleged facts do not support an inference that the Lottery Office broke its promise, or that Palese suffered any consequences because of the Defendants' commitment.⁵⁸ The letter stated that "[i]f no other claims are made [within one year], the Lottery will then determine whether it has the legal authority under the Lottery laws and regulations to

⁵⁶ The Court could not find that the terms needed to rescue Palese would have been included if they had been "negotiated" because the opposite (i.e., the winning ticket is necessary) of those favorable terms was, in fact, specified. Thus, Palese attempts to use the covenant of good faith and fair dealing for a purpose it cannot accomplish: to contradict the agreement's express terms.

⁵⁷ See *supra* note 15 and accompanying text.

⁵⁸ Palese relies on the fact that the prize money reverted to the General Fund before the year had expired to support his claim that the Defendants did not investigate his claim in good faith. However, there is no allegation that Palese's claim was harmed by the transfer of the funds to the General Fund. There is no reason to infer that the Lottery Office could not have arranged for payment of the prize from the General Fund, had it found in Palese's favor.

consider your letter claiming the winning prize.”⁵⁹ The Lottery then followed-up on its promise to review the claim, concluding that “[u]nder Delaware Lottery Laws and Regulations, the claimant of a Lottery prize is required to produce the actual winning ticket.”⁶⁰ That communication reflected its determination of whether it could pay the prize to him. It also satisfied the commitment that it had made to him.⁶¹

Furthermore, the allegations do not demonstrate that the Lottery Office acted in bad faith.⁶² The Lottery Office considered Palese’s claim and ultimately determined that it could not lawfully award the prize money to a non-ticket holder. This was, of course, an unfortunate outcome for Palese, but the Defendants’ actions were consistent with the laws of this State.

Moreover, the alleged facts do not support Palese’s assertion that he detrimentally relied on the Defendants’ conduct. This claim, which may be

⁵⁹ Pls. Ans. Br. at Ex. C.

⁶⁰ Pls. Ans. Br. at Ex. G. Thus, the Lottery Office honored its commitment to determine whether it had the “legal authority” to pay the prize under those circumstances.

⁶¹ Palese may have expected that the Lottery Office would conduct a thorough investigation of the factual basis for his claim. Of course, the Lottery Office only promised to “determine whether it has the legal authority” to pay the prize without a ticket. Once the Lottery Office concluded, as a matter of law, that delivery of the winning ticket was necessary, the question of whether Palese, in fact, had held, and then lost, the winning ticket descended into the realm of the immaterial.

⁶² It is not clear what rights Palese is claiming under the implied covenant of good faith and fair dealing that may have attached to the Lottery Office’s letter. It is a sufficient answer that there is no basis for implying any additional terms for any purpose underlying the covenant of good faith doctrine. The Lottery Office fairly assessed the claim. No gaps need filling; no unanticipated developments occurred; no “overarching” purposes have been frustrated. *See, e.g., Dunlap*, 878 A.2d at 441-42.

characterized as in the nature of equitable estoppel, is premised on Palese's contention that, because of the Defendants' statements, he was foreclosed from pursuing alternative methods of claiming the prize money. Specifically, Palese suggested that he might have sought the assistance from the Legislature, but for his reliance on the Lottery Office's commitment.

To survive a Del. R. Civ. P. 12(b)(6) motion to dismiss, an equitable estoppel claim must allege inequitable conduct by the defendant that led the plaintiff to change its position, in justifiable reliance on that conduct, to its detriment. The defendants' conduct may be either an affirmative act or a failure to act when duty required.⁶³

Palese's argument fails because nothing done by, said by, or omitted by the Lottery Office precluded Palese from seeking help from the General Assembly (or from taking any other action that might have achieved his goal⁶⁴) while he waited to hear from the Lottery Office, and, perhaps more importantly, Palese is not foreclosed from petitioning the General Assembly now.⁶⁵

⁶³ *Moore Bus. Forms*, 1995 WL 662685, at *9.

⁶⁴ Palese has not been able to identify any other pathway that he would have followed in the absence of the Lottery Office's commitment.

⁶⁵ Lemons' commitment may have induced Palese to wait until the expiration of the year following the lottery drawing. If the Lottery Office, for example, had argued that Palese's claim was time-barred, equity might not have countenanced such an effort. The Court views Palese's claim as timely brought. He has suffered no prejudice as the result of the Lottery's representations. A promise to investigate—which is all the Lottery did—cannot be warped into some sort of obligation to pay.

IV. CONCLUSION

For the forgoing reasons, Palese's Complaint is dismissed for failure to state a claim for which relief can be granted.⁶⁶

IT IS SO ORDERED.

⁶⁶ The Court need not, and does not, address other arguments advanced by the Defendants.