

**JOHN L. SOILEAU, ET AL.**

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**NO. 2017-CA-1003**

**VERSUS**

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**COURT OF APPEAL**

**CHURCHILL DOWNS  
LOUISIANA HORSERACING  
COMPANY, LLC,  
CHURCHILL DOWN  
LOUISIANA VIDEO POKER  
COMPANY, LLC**

\*

**FOURTH CIRCUIT**

\*

**STATE OF LOUISIANA**

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**CONSOLIDATED WITH:**

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**JOHN L. SOILEAU, ET AL.**

**NO. 2017-CA-1004**

**VERSUS**

**CHURCHILL DOWNS  
LOUISIANA HORSERACING  
COMPANY, LLC, CHURCHILL  
DOWN LOUISIANA VIDEO  
POKER COMPANY, LLC**

APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2014-03873, DIVISION "G-11"  
Honorable Robin M. Giarrusso, Judge

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**Judge Roland L. Belsome**

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(Court composed of Judge Roland L. Belsome, Judge Rosemary Ledet, Judge Paula A. Brown)

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**REVERSED AND REMANDED  
JUNE 13, 2018**

This appeal stems from a trial court judgment affirming the administrative decision of the Louisiana State Racing Commission (the “Commission”), which granted an exception of no right of action and dismissed the Plaintiffs’ lawsuit. For the following reasons, we reverse and remand the case to the Commission for further proceedings consistent with this opinion.

### **FACTS AND PROCEDURAL HISTORY**

The instant litigation was the subject of a previous appeal to this Court, wherein we summarized the factual and procedural background as follows:

This lawsuit constitutes complicated and protracted litigation involving a dispute in the horse racing industry between ... [quarter-horsemen] and Churchill Downs Louisiana Horseracing Company, LLC, owner of the Fair Grounds Race Course & Slots facility in New Orleans, and Churchill Downs Louisiana Video Poker Company, LLC.<sup>1</sup> The crux of the dispute relates to the distribution of supplemental purse monies collected in off track facilities.

On April 21, 2014, John L. Soileau, Jo Baia Foreman, Alvin Brossett, Justin Dehart, Kenneth L. Roberts, John E. Hamilton, Danny Lavergne, Donald Watson, Joseph D. Manucy and Lucan P. Constantin, file[d] a “Petition for Declaratory Judgment, Permanent Injunction, and Damages-Class Action.” The plaintiffs were collectively represented as quarter-horse[men] ... who have won purses at the Fair Grounds Race Track since the effective date of La. R.S. 27:438 and its predecessor statutes since 2008. The petition

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<sup>1</sup> The Churchill Downs defendants are collectively referred to as the “Fair Grounds.”

named ... [the Fair Grounds] as a “device owner” for purposes of Louisiana law as defendants.

...

The original plaintiffs filed an amended petition adding HBPA as a defendant.<sup>2</sup> The trial court sustained the exception of primary jurisdiction and ordered the matter referred to the Louisiana Racing Commission for adjudication.<sup>3</sup> ...

Several exceptions were filed in the Louisiana State Racing Commission’s proceeding including an exception of no right of action. That exception was sustained by the Commission in an administrative decision dismissing this lawsuit with prejudice. The matter went to the district court on an appeal of that Administrative Order. ... [T]he trial court rendered a judgment affirming the Louisiana State Racing Commission’s decision.

*Soileau, et al. v. Churchill Downs Louisiana Horse Racing Co., LLC, et al.*, 17-0264, slip op. at pp. 1-2 (La. App. 4 Cir. 8/23/2017) (unpub.).

In the prior appeal, this Court dismissed the Plaintiffs’ case without prejudice.<sup>4</sup> On remand, the trial court rendered a judgment, which was subsequently amended to dismiss the lawsuit with prejudice.<sup>5</sup> The Plaintiffs filed appeals from both judgments. This Court consolidated the two appeals.

## **STANDARD OF REVIEW**

When reviewing an administrative decision, the district court functions as an appellate court. Since no deference is owed by the appellate court to the district

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<sup>2</sup> The original petition alleges that the Plaintiffs are “Louisiana quarter-horse owners, trainers, and jockeys and as such are ‘horsemen’ entitled to the payment of supplemental purses....” However, the amended petition clarifies that the Horsemen’s Benevolent and Protective Association (“HBPA”) membership is only open to licensed owners and/or trainers of thoroughbred and quarter racehorses. It further avers that the named Plaintiffs are all members of the HBPA, “since at least 2008.” This amendment is significant as it eliminates jockeys from the named class of Plaintiffs.

<sup>3</sup> This Court denied the Plaintiffs writ application requesting supervisory review of the trial court’s ruling.

<sup>4</sup> This Court found that the trial court’s judgment lacked the proper decretal language. Therefore, the case was remanded for the trial court to render a valid final judgment.

<sup>5</sup> Initially, the judgment did not name the third defendant, Churchill Downs Louisiana Horseracing Company, LLC. As a result, the trial court rendered an amended judgment to include the third defendant it “inadvertently omitted” and to correct a typographical error.

court's fact findings or legal conclusions, the appellate court need only review the findings and decision of the administrative agency. *Garber v. City of New Orleans Through City Planning Comm'n*, 16-1298, p. 6 (La. App. 4 Cir. 12/13/17), 234 So.3d 992, 997 n.7, *writ denied sub nom.*, 18-0351 (La. 4/20/18) (citation omitted).

“The standard of appellate review of an administrative agency’s decision is distinct from and narrower than that which applies to ordinary civil and criminal appeals.” *Reaux v. Louisiana Bd. of Med. Examiners*, 02-0906, pp. 2-3 (La. App. 4 Cir. 5/21/03), 850 So.2d 723, 726 (quoting *Holladay v. Louisiana State Board of Medical Examiners*, 96-1740, p. 4 (La. App. 4 Cir. 2/19/97), 689 So.2d 718, 721. The exclusive grounds upon which an administrative agency’s decision may be reversed or modified on appeal are enumerated in La. R.S. 49:964(G) of the Administrative Procedure Act (“APA”).<sup>6</sup> *Armstrong v. Louisiana State Bd. of Medical Examiners*, 03-1241, pp. 9-11 (La. App. 4 Cir. 2/18/04), 868 So.2d 830, 837-38. An agency’s action is presumed to be legitimate and correct, and the burden is on the appellant to demonstrate grounds for reversal or modification. *Reaux*, 02-0906 at p. 2, 850 So.2d at 726 (citation omitted).

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<sup>6</sup> La. R.S. 49:964(G) provides that a court can reverse an agency’s decision if an appellant’s substantial rights have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) **Affected by other error of law;**
- (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency’s determination of credibility issues (emphasis added).

## **LAW AND ANALYSIS**

On appeal, the Plaintiffs assert that the trial court erred in affirming the decision of the Commission, which granted an exception of no right of action in favor of the Defendants and dismissed the Plaintiffs' lawsuit with prejudice. "An action can be brought only by a person having a real and actual interest which he asserts." La. C.C.P. art. 681. The peremptory exception of no right of action, La. C.C.P. art. 927 A(6), raises the question of whether the plaintiff has the capacity or legal interest in judicially enforcing the right asserted. La. C.C.P. art. 927(A)(6); *Bourbon Investments, LLC v. New Orleans Equity LLC*, 15-1234, p. 14 (La. App. 4 Cir. 12/21/16), 207 So.3d 1088, 1096 (citations omitted).

"The function of an exception of no right of action is to determine whether the plaintiff belongs to the class of persons to whom the law grants the cause of action asserted in the suit." *N. Clark, L.L.C. v. Chisesi*, 16-0599, p. 5 (La. App. 4 Cir. 12/7/16), 206 So.3d 1013, 1016 (quotations and citations omitted). "When the facts alleged in the petition provide a remedy under the law to someone, but the plaintiff who seeks the relief for himself or herself is not the person in whose favor the law extends the remedy, the proper objection is no right of action, or want of interest in the plaintiff to institute the suit." *Howard v. Administrators of Tulane Educ. Fund*, 07-2224, p. 16 (La. 7/1/08), 986 So.2d 47, 59 (quoting Harry T. Lemmon & Frank L. Maraist, 1 LOUISIANA CIVIL LAW TREATISE, CIVIL PROCEDURE § 6.7 (1999)).

In reviewing a trial court's ruling on an exception of no right of action, an appellate court should focus on an examination of the pleadings. *N. Clark, L.L.C.*, 16-0599, p. 6, 206 So.3d at 1017 (quotation and citations omitted). In absence of evidence to the contrary, the averments of fact in the pleading must be taken as

true. *Id.*, 16-0599, pp. 5-6, 206 So.3d at 1017 (citations omitted). Assuming that the petition states a valid cause of action for some person, a court should focus on whether the particular plaintiff has a right to bring the suit. *N. Clark, L.L.C.*, 16-0599, p. 6, 206 So.3d at 1017 (quotation omitted).

The only issue before this Court is whether the Commission committed legal error in finding that the Plaintiffs did not have a right of action against the Defendants, the Fair Grounds and the HBPA. Considering that the Plaintiffs have a real and actual interest in the causes of action asserted against the Fair Grounds, as alleged beneficiaries under the statute, and the HBPA, as alleged members of the association, we find the Commission erred in granting the Defendants' exception of no right of action.

Beginning with the initial pleadings, the Plaintiffs averred that they are horsemen entitled to the payment of supplemental purses pursuant to La. R.S. 27:438.<sup>7</sup> They further averred that the Defendants are withholding disbursements of supplemental purse funds in favor of the thoroughbred horsemen, in violation of its obligation under the plain terms set forth in La. R.S. 27:438. In particular, the Plaintiffs alleged that the money collected during the off-season is not distributed at the next live race meeting, which is a quarter-horse race. Instead, the money is withheld until the next live thoroughbred horse race, which violates the plain terms of the statute.

In their first amended the petition, the Plaintiffs added the HBPA as a defendant to the lawsuit and re-pled the allegations in their original petition. They

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<sup>7</sup> While the original petition alleges that the Plaintiffs are "Louisiana quarter-horse owners, trainers, and jockeys and as such are 'horsemen' entitled to the payment of supplemental purses... [,]" the amended petition clarifies HBPA membership is only open to licensed owners and/or trainers of thoroughbred and quarter racehorses. It further avers that the named Plaintiffs are all members of the HBPA, "since at least 2008."

also amended and supplemented with the additional pleadings concerning the HBPA. Specifically, they averred that the “HBPA is open to those persons who are licensed owners and/or trainers of the thorough bred and/or quarter racehorses [.]” They further averred that the named Plaintiffs are members of the HBPA, “and have been members since at least 2008.” Finally, citing to La. R.S. 4:179.1 and La. R.S. 27:438, the Plaintiffs claimed that the HBPA owed a “statutory and/or fiduciary duty” to represent horsemen in good faith, which it breached by approving the manner in which the Fair Grounds distributes the supplemental purse funds. As a result, they requested a permanent injunction and damages for their losses.

### **RIGHT OF ACTION AGAINST THE FAIRGROUNDS**

A review of the foregoing pleadings reveals that the Plaintiffs have a right to individually bring a lawsuit against the Fair Grounds for violation of its statutory duty under La. R.S. 27:438. La. R.S. 27:438 states, in relevant part:

- A. The owner of the licensed establishment shall pay twenty percent of the net device revenue derived from the operation of devices at that licensed establishment **to be used to supplement purses for horsemen** as provided in Subsection B of this Section. Such monies shall be made available for use as purses monthly, prior to the twentieth day of the month following the month in which they are earned [emphasis supplied].
- B. Revenues earned for purse supplements under Subsection A shall be disbursed, accounted for, and used as follows:

...

- (2) **Monies earned for purse supplements from devices located at an eligible racing facility not currently conducting live racing shall be placed in an interest-bearing account until the first day of the next live race meeting conducted at that facility**, at which time the accumulated monies derived from this Paragraph and interest earned on such monies shall be added to all other monies currently provided for purses and purse supplements at that race meeting under other provisions



of the law and shall be used at that race meeting [emphasis supplied].

Since the pleadings allege that the Plaintiffs are all horsemen,<sup>8</sup> they have a real and actual interest, as potential beneficiaries under La. R.S. 27:438, to bring a lawsuit against the Fair Grounds for breaching its statutory obligations under La. R.S. 27:438(B) relative to the distribution of supplemental purses.

The Fair Grounds' argument that the HBPA is the only entity authorized to bring suit on behalf of the Plaintiffs is misplaced. In support of this argument, the Fair Grounds cites La. R.S. 4:179.1, which states:

The Horsemen's Benevolent and Protective Association [HBPA] is hereby designated and recognized as an authorized representative that shall represent member and other horsemen racing at licensed race meetings held in the state of Louisiana for the purpose of but not limited to negotiating contracts for such horsemen with all racing associations licensed by the state of Louisiana, relative to purses, hospitalization, medical benefits, conditions, and all other matters of interest and concern to such horsemen.

While the HBPA is an authorized representative concerning contract negotiations, these proceedings are not related to breach of a contract or any other matter negotiated by the HBPA. Rather, these proceedings concern an alleged breach of the Fair Grounds' statutory duties. As alleged statutory beneficiaries to the supplemental purse funds, the Plaintiffs belong to the class of persons to whom the law grants the causes of action asserted in the lawsuit. Accordingly, the Plaintiffs have a right of action and standing to sue the Fair Grounds.

### **RIGHT OF ACTION AGAINST THE HBPA**

Likewise, the Plaintiffs as alleged members of the HBPA have a right of action against the HBPA for violations of statutory and/or fiduciary duties to its

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<sup>8</sup> Specifically the amended petition alleges that the Plaintiffs are members of the HBPA, which consists of licensed owners and/or trainers of racehorses. Further, La. R.S. 4:143(4) states: "Horseman' means an owner or trainer of a race horse."

members. In particular, the amended petition alleges that the Plaintiffs are all members of the HBPA. It further avers the HBPA owed a statutory and/or fiduciary duty under La. R.S. 4:179.1 and La. R.S. 27:438 to represent the Plaintiff members in good faith, and it breached those duties to the extent that they approved the Fair Grounds' withholding and disbursement of the supplemental purses to the thoroughbred horsemen. *See Fox v. Horsemen's Benev. & Protective Ass'n*, 426 So.2d 278, 279-81 (La. App. 4<sup>th</sup> Cir. 1983) (where the plaintiff, a member of the HBPA, filed a suit for injunctive relief to prohibit the HBPA from an alleged statutory violation concerning the use of funds.)

While the HBPA concedes that the petition alleges that all of the Plaintiffs are members of the HBPA, it argues that some of the named Plaintiffs are jockeys, who are not members of the HBPA. Thus, it concludes these non-members (non-horsemen) do not have a right of action. However, in the absence of evidence to the contrary, we must accept the pleadings of fact as true. *N. Clark, L.L.C., supra*. Since the HBPA offered no evidence to identify the non-member Plaintiffs, we must accept the Plaintiffs' factual allegations as true when considering an exception of no right of action.<sup>9</sup> Accordingly, the Plaintiffs, all alleged members of the HBPA, have a right of action against the HBPA for breaching its statutory and fiduciary obligations to its members.

## **CONCLUSION**

Given that the Plaintiffs have a right of action against the Fair Grounds and the HBPA, the Commission committed legal error in granting the exception of no

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<sup>9</sup> The additional arguments raised by the HBPA, which suggest that the lawsuit is premature and fails to properly state a cause of action for statutory breach of statutory and/or fiduciary duty, are not proper inquiries on an exception of no right of action. Our review is limited to whether the Plaintiffs have a legal right or interest in enforcing the matter asserted. *See* La. C.C.P. art. 927.

right of action filed by the Defendants and dismissing the Plaintiffs' case with prejudice. Accordingly, the ruling is reversed and the matter is remanded to the Louisiana State Racing Commission for further proceedings consistent with this opinion.<sup>10</sup>

**REVERSED AND REMANDED**

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<sup>10</sup> Even assuming the Commission's ruling was correct, the Plaintiffs should be afforded an opportunity amend the petition to cure any defects before dismissal. *See* La. C.C.P. art. 934.