STATE OF MICHIGAN

COURT OF APPEALS

RICHARD STIGLMAIER,

Plaintiff-Appellee,

v

DETROIT ENTERTAINMENT, L.L.C., d/b/a MOTORCITY CASINO, and JOHN DOE EMPLOYEES OF DETROIT ENTERTAINMENT, L.L.C.,

Defendants-Appellants.

UNPUBLISHED
August 31, 2004

No. 246465
Wayne Circuit Court
LC No. 00-026997-NZ

STEVEN BARRY STOLMAN, JEFFREY SMITH, RAYMOND SMITH, WILLIAM STANKO, and STANLEY J. PITTMAN,

Plaintiffs-Appellees,

v

DETROIT ENTERTAINMENT, L.L.C., d/b/a MOTORCITY CASINO, and JOHN DOE EMPLOYEES OF DETROIT ENTERTAINMENT, L.L.C.,

Defendants-Appellants.

No. 246466
Wayne Circuit Court
LC No. 01-143092-NZ

Before: Saad, P.J., and Talbot and Borrello, JJ.

BORRELLO, J. (*dissenting*).

These consolidated appeals are before this Court pursuant to our Supreme Court's orders, in lieu of granting leave to appeal, remanding the cases to this Court for consideration as on leave granted. Defendant challenges the trial court's order granting plaintiffs' motion for class certification. Contrary to the majority, I would affirm the classes, though I believe they should be modified.

The majority is correct in its assertion that we review a decision on class certification under the clearly erroneous standard. In this case, defendants have failed to persuade me that certification of the two classes was "clearly erroneous." However, the majority, citing some technical problems with class inclusion, chooses to deny class certification rather than to modify the classes consistent with the authority granted to this Court pursuant to MCR 7.216(A)(7).

Concerning the Stiglmaier class, plaintiffs have represented that in determining whether a patron was arrested for a felony, a misdemeanor, or neither, the description of the offense contained in defendant's incident report will control. Thus, contrary to the holding of the majority, it will not be necessary to conduct individual hearings concerning the offense that led to the patron's arrest. Persons arrested for felonies are excluded from the Stiglmaier class. Additionally, in light of the relevant statutory provisions, plaintiffs' complaint excludes persons arrested for misdemeanors by licensed security guards, and persons arrested for first- or second-degree retail fraud. Similarly, I disagree with the factual conclusion reached by the majority that the question whether "each putative class member has been falsely imprisoned is a highly individualized one." Plaintiffs' complaint, the allegations of which must be accepted as true for purposes of our review, alleges that patrons were detained, assaulted, taken to a detention room, handcuffed to a bench, interrogated, and photographed. Taking these facts as true, and assuming the arrests were illegal, the class members suffered a common injury.

The majority correctly observes that if a security guard is properly licensed, MCL 338.1080 allows the guard to arrest individuals for a variety of reasons described in MCL 764.15, including "ordinance violation[s]." Thus, the majority correctly asserts that the composition of the Stiglmaier class also invokes the question whether slot-walking violates MCL 432.218(2)(j). But rather than extinguish the class, the proper remedy is to redefine the class. Therefore, pursuant to MCR 7.216(A)(7), I would modify the definition of the Stiglmaier class to the following:

> All persons who were permanently barred from going onto the defendant's premises and who were detained by a then unlicensed member of defendant's security personnel for a reason other than a felony.[1]

Concerning the Stolman class, it is apparent that plaintiffs and the trial court intended to restrict the class to persons who, factually, were arrested by unlicensed security guards for "slot-walking," i.e., taking chip, tokens, or credits left behind by other patrons in unattended gaming machines, and that the pertinent legal issue was whether the conduct in question amounted to a felony, a misdemeanor, or neither. If the conduct in question was anything other than a felony, defendant's unlicensed security guards lacked the authority to arrest persons who engaged in it. The trial court purposefully omitted plaintiffs' original suggestion that the coins, tokens, or credits that were taken must have been "abandoned" because it found that such language required a determination of liability as a precursor to class membership. But the court's class definition seems to presume that all conduct characterized as slot-walking constituted a violation

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[1] This appears to be what plaintiffs originally intended; it was the trial court that added the "regardless of the licensure" language.

of MCL 432.218(2)(j), which is explicitly defined as a *felony*. Under the court's definition, any person engaged in such conduct could be legally arrested by an unlicensed security guard pursuant to MCL 764.16. It is clear that this is not what plaintiffs intended. Therefore, pursuant to MCR 7.216(A)(7), I would also modify the class definition of the Stolman class to the following:

> Those persons who were patrons of the defendant and who were detained taking coins, tokens, or credits from gambling machines, and who were consequently permanently barred from entering defendant's casino.

For the reasons set forth in this opinion I dissent from the opinion of the majority.

/s/ Stephen L. Borrello