

No.
New Westminster Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JOYCE MAY ROSS

Plaintiff(s)

AND:

BRITISH COLUMBIA LOTTERY CORPORATION, ORANGEVILLE RACEWAY
LIMITED and GATEWAY CASINOS & ENTERTAINMENT INC.

Defendant(s)

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF(S)

Part 1: STATEMENT OF FACTS

[Using numbered paragraphs, set out a concise statement of the material facts giving rise to the plaintiff(s) claim]

The parties

1. The Plaintiff, Joyce May Ross (the "Plaintiff") is a self-employed business person, and resides at 8933-112th Steet, Delta, British Columbia, V4C 4X5.
2. The Defendant British Columbia Lottery Corporation ("Lottery Corporation") is a corporation, incorporated under the laws of the Province of British Columbia, with a registered and records office at #700, 275 Landsdowne Street, Kamloops, British Columbia, V2C 6H6.
3. The Defendant Orangeville Raceway Limited, doing business *inter alia* as Fraser Downs ("Fraser Downs Casino"), is a company, duly incorporated under the laws of the Province of British Columbia, with a registered and records office at #2600, Three Bentall, 595 Burrard Street, Vancouver, British Columbia, V7X 1L3.
4. The Defendant Gateway Casinos & Entertainment Inc, doing business *inter alia* as Cascades Casino ("Cascades Casino") is an extraprovincially registered company with a registered and records office of 2300-1055 Dunsmuir Street, Four Bentall Centre, Vancouver, British Columbia, V7X 1J1.

Background facts:

5. The Plaintiff was born on January 12, 1956, and at all material times relevant to this action was a self-employed business person engaged in both the businesses of real estate re-development, and the operation of a singles club and dance business.
6. The Plaintiff was introduced to gambling in or about 1999 when she visited the Riverboat Casino in New Westminster, British Columbia, and played blackjack and five cent slot machines.
7. Between 1999, and approximately 2003, the Plaintiff continued to gamble. As of late 2003, and continuing into 2004, she commenced to gamble two to three times per week, and she began to feel such emotion surrounding gambling that she began to lose her ability to control the frequency of her gambling and the amount she gambled.
8. Between late 2003, and June 12, 2007, the Plaintiff's problem with gambling worsened.

9. In or about November 2004, Fraser Downs Casino opened in Cloverdale, British Columbia, and the Plaintiff commenced to gamble at that establishment. In or about May 2005, Cascade Casino opened in Langley, British Columbia, and the Plaintiff commenced to gamble at that establishment as well.
10. As the Plaintiff's problem with gambling worsened, she began to gamble daily at both Fraser Downs Casino and Cascades Casino. On some occasions, she gambled over \$1,000 in a single day, and on other occasions lesser amounts.
11. As of 2005, the Plaintiff's problem with gambling developed to such a degree that she borrowed significant sums of money from friends and relatives to continue gambling, had reached the maximum limits on her credit cards, and was using money to gamble which she needed to maintain her living expenses.
12. The Plaintiff started using business income and proceeds from the sale of real estate to maintain her gambling and did so to such a measure that she was short of funds for the necessities of life.
13. During 2005, and continuing in 2006 through to June 12, 2007, the Plaintiff's problem with gambling developed to such an extent that she became afraid that the continuation of her gambling would lead to her complete financial ruin.

Voluntary self-exclusion:

14. In or about June, 2007, the Plaintiff had suffered heavy losses at both Fraser Downs Casino and Cascades Casino, exceeding \$1,000 per day, and felt that she had lost any and all control over her problem with gambling. Her practice had become to continue to gamble until she was unable to secure additional monies for that purpose.
15. The Plaintiff noticed signage in both Fraser Downs Casino and Cascades Casino, prominently displayed, which indicated that there was a sign-out program for problem gamblers.
16. Brochures were available at both Cascades Casino and Fraser Downs Casino, promoting the availability and effectiveness of the sign-out program (the "Program"), with headings such as "Time Out: It's up to you" and "When gambling stops being a game".
17. On or about June 12, 2007, the Plaintiff went to Fraser Downs Casino for the specific purpose of entering into the Program. The Plaintiff believed she was taking charge of her gambling problem and that the Program would provide her protection.

18. The brochures describing the Program stated, *inter alia*, "It is your responsibility to honour your commitment. You will not be allowed back in before your exclusionary period is up. If you violate your self-exclusion contract, according to the (BC) Gaming Control Act, charges can be laid and you may be fined \$5,000."
19. During her attendance at Fraser Downs Casino, on or about June 12, 2007, the Plaintiff was interviewed by two male employees of Fraser Downs Casino, who identified themselves as security personnel. These two male employees made the following representations to the Plaintiff:
 - a) They informed the Plaintiff that she had an option to exclude herself between six months and three years;
 - b) They informed the Plaintiff that if she entered into the Program and entered the casino thereafter, she would be escorted out of the casino by security staff;
 - c) They explained that the Program was enforced by the security staff reviewing the sign-out pictures and forms each day when they arrived at work to ensure that none of the persons who entered the Program were in the casino.
 - d) They told the Plaintiff that she would not get away with gambling in any of the casinos in the Lower Mainland, if she entered into the Program.
 - e) They informed the Plaintiff that they would de-activate her "players card"; and
 - f) They informed the Plaintiff that if she did win a big jackpot after having entered into the Program, the casino would withhold her winnings and that she may get such winnings back at the expiry of her self-exclusion period.
20. The employees completed the Voluntary Self-Exclusion Form, and had the Plaintiff sign it, thereby entering the Program. The Plaintiff chose the maximum period of three years to self-exclude herself from gambling. The employees took three pictures of the Plaintiff from different angles.
21. The employees walked the Plaintiff out the back of Fraser Downs Casino and she left.
22. The Plaintiff signed the Voluntary Self-Exclusion Form to obtain a psychological benefit, specifically to prevent her from acting on her compulsive urge to gamble. She believed that she was done with gambling. The Plaintiff had a feeling of hope that she would not continue to court financial ruin through gambling.

Post exclusion gambling:

23. The Plaintiff did not gamble for the next two weeks after entering the Program and believed that she would not be able to gamble at Fraser Downs Casino and Cascades Casino even if she tried.

24. After a few weeks, the Plaintiff visited her father in Victoria, British Columbia. In Victoria, she attended upon a casino called Great Canadian Casino. She felt guilty and excited. She was unsure whether she would be able to get away with entering the casino. She gambled approximately \$500 on that occasion.
25. For another two to three weeks, the Plaintiff did not gamble. Then one day she gave into a compulsive desire to gamble and attended upon Fraser Downs Casino. As she entered, she saw security personnel who knew her. She entered and gambled approximately \$1,000 on that occasion.
26. From that point onwards, the Plaintiff continued to gamble at both Fraser Downs Casino and Cascades Casino. She gambled more and more, as often as she could, with all the money she could get. She had no control. She could not stop herself from going to these Casinos and gambling as much as possible.
27. During the period of her self-exclusion, continuing to the present, the Plaintiff has lost approximately \$331,000 in gambling proceeds.
28. A very small amount of this total was gambled at casinos other than Fraser Downs Casino and Cascades Casino. The balance (approximately 95% of the \$331,000), was gambled at Fraser Downs and Cascades.
29. Since the date of her self exclusion, the Plaintiff has lost approximately \$315,000 at Fraser Downs Casino and Cascades Casino through gambling.
30. Approximately six months after her self-exclusion, the Plaintiff phoned the gambling help-line advertized in both Fraser Downs Casino and Cascades Casino, and requested that her picture be re-circulated as the Casinos were not taking any steps to prevent her from entering. She was continuing to gamble without any control.
31. In the Spring of 2008, the Plaintiff also attended gambling counselling paid for by the Lottery Corporation. The Plaintiff did not find the counselling to be helpful.
32. The Plaintiff believes that she made a total of three telephone calls to the Lottery Corporation requesting enforcement efforts in regards to the Program.
33. Since entering the Program, the Defendants have not once made any attempt to prevent the Plaintiff from entering any of the Casinos nor from gambling.
34. Various staff members at both Fraser Downs Casino and Cascades Casino are known to the Plaintiff and witnessed on countless occasions her post self-exclusion gambling activities, apparently with full knowledge of her self-exclusion and without taking any steps to enforce the self-exclusion.

Part 2: RELIEF SOUGHT

[Using numbered paragraphs, set out the relief sought and indicated against which defendant(s) that relief is sought. Relief may be sought in the alternative]

1. The Plaintiff claims from the Defendants:
 - (a) an award of damages for
 - [i] general damages;
 - [ii] special damages;
 - [iii] aggravated damages; and
 - [iv] restitution of the monies paid by the Plaintiff to the Defendants after entering into the self-exclusion program;
 - [v] a declaration of a constructive trust over all monies paid by the Plaintiff to the Defendants after entering into the self-exclusion program.
 - (b) costs of this action;
 - (c) interest pursuant to the *Court Order Interest Act*; and
 - (d) such further and other relief as this Honourable Court may seem just and meet.

Part 3: LEGAL BASIS

[Using numbered paragraphs, set out a concise summary of the legal bases on which the plaintiff(s) intend(s) to rely in support of the relief sought and specify any rule or other enactment relied on. The legal bases for the relief sought may be set out in the alternative.]

Negligence:

1. The Plaintiff claims that the Defendants owed a duty of care to the Plaintiff which duty was breached by the Defendants, the particulars of the breach are as follows:
 - (a) Failing to take reasonable and prudent steps to enforce the Program;
 - (b) Failing to maintain any system to ensure that persons who entered into the Program, and in particular the Plaintiff, were in fact denied entry to the Casinos, and to detect and remove such persons, and in particular the Plaintiff, if entry were gained;
 - (c) Representing to the Plaintiff that, after entering into the Program, she would be denied entry to the Casinos when this was not in fact the case; and
 - (d) Allowing the Plaintiff to continue to gamble when they knew or ought to have known that she had no self control to protect herself from her problem with gambling.

2. The Defendant Lottery Corporation is vicariously liable for the actions of the Defendants Fraser Downs Casino and Cascades Casino since these Casinos operated under the Lottery Corporation's statutory mandate.
3. As a result of the negligence of the Defendants, the Plaintiff suffered psychiatric and financial losses, including an emotional injury in the nature of an aggravation of her psychiatric disorder in relation to gambling.

Breach of contract:

4. The Voluntary Self-Exclusion Form is a contract between the Plaintiff and the Defendants (the "Contract").
5. Under the terms of the Contract, the Plaintiff sought the benefit of voluntary self-exclusion.
6. The Contract provided consideration to the Defendants because it permitted the Defendants to represent to the public in general, and to the Plaintiff in particular, that they had a program in place to address the social ills of gambling. The Defendants benefited financially from the making of this representation.
7. The Defendants breached their obligations under the Contract by not enforcing the self-exclusion promised to the Plaintiff as a term of the Contract.

Waiver of tort and unjust enrichment:

8. Gambling is criminally prohibited by the Criminal Code of Canada and has been so prohibited since approximately 1882.
9. Gambling is only legal when carried out in accordance with the narrow exemptions, specified by the Criminal Code of Canada, such as gambling conducted under the authority of the Gaming Control Act of British Columbia.
10. Under the Gaming Control Act, ss. 92 and 93, gambling involving a person who has entered into the voluntary self-exclusion program is illegal.
11. The Defendants owed a fiduciary duty to the Plaintiff once they learned of her vulnerability due to a problem with gambling and once she relied upon the Defendants by requesting self-exclusion to address this problem.
12. By continuing to accept money from the Plaintiff through gambling, after her self-exclusion, the Defendants were acting in violation of Federal criminal law, Provincial statutory law, and their fiduciary duty to the Plaintiff.

13. The Plaintiff claims restitution of all sums paid to the Defendants by the Plaintiff, after the date of her self-exclusion, because these monies were paid in circumstances of illegally and breach of fiduciary duty.
14. The monies paid to the Defendants by the Plaintiff enriched the Defendants and deprived the Plaintiff, with no juridical reason for this enrichment nor deprivation.

Plaintiff's address for service: Hanson Wirsig Matheos
#210 - 15225 104th Avenue
Surrey, BC V3R 6Y8
Telephone: 604-583-2200

Fax number address for service (if any): 604-583-3469

E-mail address for service (if any): lawyers@hwm.ca

Place of trial: New Westminster, British Columbia

The address of the registry is: 651 Carnarvon Street, Begbie Square
New Westminster, BC V3M 1C9

Date: day of July, 2010

Signature of lawyer for plaintiff(s)
JAMES A. HANSON

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

1. The Plaintiff claims against the Defendants for monies paid to the Defendants for gambling after the date of her voluntary self-exclusion in violation of the Gaming Control Act. The Plaintiff makes her claims in negligence, breach of contract and wavier of tort.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflicts of laws
- none of the above
- do not know

Part 4

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]

1. *Gaming Control Act*, [SBC 2002] Chapter 14;
2. *Criminal Code of Canada*, R.S.C. 1985, c.C-46; and
3. *Negligence Act*, [RSBC 1996] Chapter 333