

NO. 124472

In the
Supreme Court of Illinois

COLIN DEW-BECKER,

Plaintiff/Petitioner,

v.

ANDREW WU,

Defendant/Respondent.

from the Appellate Court of Illinois, First Judicial District, Case No. 1- 17-1675
There heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Municipal Division, Case No. 2016 M1 011598
The Honorable Judge Leon Wool, Presiding

APPELLANT'S REPLY BRIEF

BERTON N. RING
BERTON N. RING, P.C.
123 West Madison Street, 15th Floor
Chicago, Illinois 60602
(312) 781-0290
Email: bring@bnrpe.com

Attorneys for Plaintiff/Petitioner

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Carolyn Taft Grosboll
SUPREME COURT CLERK

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THE RECORD SUPPORTS THE REVERSAL

Defendant's argument on page 15 about the "insufficient record" is misplaced. The record contains the common law record, the trial transcript of the report of proceedings and the trial exhibits. The complaint itself, albeit a \$100 statutory action is however not a small claims case, which contains 14 pages of typed out paragraphs. The record complies with Illinois Supreme Court Rules 321 (Contents of the record on Appeal) and 323 (Report of Proceedings). So, defendant's arguments should be found unpersuasive. Defendant also failed to file any motions to add or supplement to the record or file his own docketing statement. As a result, since absolutely nothing is missing from the record, and the record is complete, his argument is without merit.

Fantasy sport betting or DFS was clearly defined and presented accurately in the record. For instance, the well verified plead complaint, alleged the building of the roster of players, choosing one's entry fees, with FanDuel determining the prize pool and finally formulating the money pool distribution was clearly articulated in the record. C6-7. The outcome determined by FanDuel is determined when they use a scheme to assign points to players based upon their performance in the sports games associated with the DFS contest. C8. If a participant's roster generated enough points to be among the highest scoring rosters in the DFS contest with the specific number of rosters it must outscore varying from contest to contest the participant will win a percent of the prize pool. If a participant's roster does not generate enough points to be among the highest scoring rosters in the DFS contest, the participant will lose the value of their entrance fee and win nothing in return. C8.

Plaintiff further alleged how others can be involved with potentially hundreds or thousands of individuals. In addition, there can be head-to-head DFS contests where only two

parties are involved, and one individual initiate the contest and can invite the other. In a head to head contest, where there are only two participants, they pay exactly the same entrance fees. C9.

Plaintiff alleged in his complaint that the amount of chance or skill involved in the outcome of a DFS contest is unclear, but clearly either chance or skill or some combination of the two must be involved in determining the outcome of any game. C12.

Here, defendant did not file any motions attacking the pleading or even an answer, perhaps thinking that this was perhaps a small claims case per Illinois Supreme Court Rule 281 et seq. However, this was a statutory action as opposed to a tort or contract action, the later being the requirement for a small claims case. The record is small for that reason, no answer and no motion practice. Not surprising for a \$100 case.

The trial transcript also reveals the same evidence to support that DFS is gambling that the LRA pertains. R10. The plaintiff testified that this was a head-head fantasy sports contest where each made a line-up of players from the National Basketball Association the NBA, “each participant of that contest wagers on the performance of their players from their line-up in that contest”. R 10.

Plaintiff testified that he chose “each of those players hoping that they would score the most possible points for my team, and then I made my \$100 wager which created the contest which allowed Mr. Wu to then create his line-up of players which then he would hope would have scored the most possible points for his team.” R 11-12.

This court in 1874 defined wager as a contract by which two or more parties agree that a certain sum of money or another thing shall be paid or delivered to one of them on the happening of an uncertain event. *Merchants Sav Loan & Trust Co. v. Goodrich*, 75 Ill 554, 560 (1874).

DFS is similar to horse race betting. In a horse race, the better could read the program or not read the program. If bettor reads the program the bettor may be more knowledgeable about the horses than the better that just steps up to the window and says which horse entry number, they are betting on.

Amazon and other booksellers sell hundreds of books on betting, poker and on horse racing events. Just like there are many books on poker and Texas Hold Em. NBA games are on TV just like poker games. Gambling anonymous does not preclude you from entering if you gamble on DFS contests as opposed to Casino betting on the boats. Its all gambling or wagering.

For instance, the horse racing program lists many variables, including his previous race times, the quality of his competition in the last races, the purse winnings and so forth. So, races generate more action while other races less action. Plaintiff testified that DFS betting is similar to horse race betting R 14. Regular sport book betting is operated the same way. Information is provided for instance in baseball betting about the teams' starting pitchers, the batting averages of each player on the opposite team against the other team's starting pitcher and of course the injury updates.

Defendant's arguments that DFS is not wagering is contrary to the record and common sense.

"I think both skill and luck are components of this for sure." R 15. That is of course like any sport betting, any horse race betting and any card game. Certainly there are rules of thumb for successful Blackjack, for instance when to stick and when to hit, and when to double down and when to take insurance and poker betting, (get out of the game when the board beats your hand) and all these principles are contained in books that too often are more than several hundreds of pages. For instance, in the *Mathematics of Poker 2006*, Bill Chen's the book's author an MIT graduate claims poker is a game of skill. <https://amazon.com> Mathematics-Poker Bill-Chen/dp/1886070253 and does not discuss the luck aspect.

THE LRA WAS UNTOUCHED FROM THE NEW LEGISLATION

Defendant's arguments starting on page 19 are also without merit. The LRA was left untouched from the new legislation. When the Video Gaming Act was passed in 2009, the legislature amended the LRA to specifically exclude gambling on video gaming terminals. So, the law is clearly not an untouched relic from 200 years ago. Just recently this court in *Carmichael v. Laborers & Ret. Bd. Employees' Annuity & Ben. Fund of Chicago*, 2018 IL 122793. There the legislature enacted some amendments to different acts following some judicial opinions.

In paragraph 30, this court held:

Similar to a legislature that is presumed to act with knowledge of all prior legislation, the drafters of the constitution are presumed to have acted with full knowledge of existing statutory law and the public policy of this state.

People v. Hickman, 163 Ill 2d 250 (1994) is also instructive. The LRA contains specific penalty provisions for the conduct's violation. Similarly, in *People v. Hickman* this court held that "due Process requires that the legislature reasonably design penalty provisions to remedy the particular evil which the legislature has selected for treatment under the statute in questions *id* at 259. Additionally, this Court held "where statutes are enacted after judicial opinions are published, it must be presumed that the legislature acted with knowledge of the prevailing case law., *id* at 262. More recently in *Grant v. Board of Educ*, 282 Ill App 3d 1011, 1021 (1996), "the legislature is presumed to be aware of judicial decisions concerning prior and existing laws.; 2b Sutherland on Statutory Construction Section 50.01.(5th Ed. 1992)."

Since the new legislation did not amend or alter the LRA, it should be presumed that the legislature with the public policy behind it intended to continue to outlaw DFS betting run by unlicensed operators such as FanDuel and keep intact the statutory penalties associated with such gambling. Had they not, clear exceptions would have been delineated in the new statute especially with the hot bed of litigation that the defendant makes reference to in his brief on page 18.

Lastly the parade of horrors that defendant asserts is factually baseless, as no statistics or hard evidence are presented for instance concerning the numbers of lawsuits even filed statewide or county wide predicated upon this statute.

WHEREFORE, plaintiff prays that the lower court and the Appellate Court's opinion be reversed.

Respectfully submitted,
COLIN DEW-BECKER

/s/ Berton N. Ring
By one of his Attorneys,
Berton N. Ring, P.C.

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NOTICE OF FILING

To: William M. Gantz
Leah R. Bruno
Eitan Kagedan
Dentons US LLP (#56309)
233 South Wacker Drive, Suite 5900
Chicago, IL 60606
bill.gantz@dentons.com
leah.bruno@dentons.com
eitan.kagedan@dentons.com

PLEASE TAKE NOTICE THAT on the 21st day of August 2019, the undersigned caused to be electronically filed with the Clerk of the Supreme Court, Appellant's Reply brief, a copy of which is attached and hereby served upon you.

/s/ Berton N. Ring

Berton N. Ring
Berton N. Ring, P.C., #6183351
123 West Madison, 15th Floor
Chicago, IL 60602
(312) 781-0290
bring@bnrpc.com

CERTIFICATE OF SERVICE VIA MAIL AND EMAIL

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true. I, Berton N. Ring, attorney, certify pursuant to Section 1-109 of the Illinois Code of Civil Procedure that I served a copy of the above-listed Reply Brief on the above-listed person at the above by depositing a copy in the U.S. Mail at 123 West Madison Street, Chicago, IL 60602 before the hour of 5:00 p.m. on August 21, 2019, with proper postage paid and emailing it to the above addresses via email at the above email addresses via the Odyssey system and the Firms email outlook account.

/s/ Berton N. Ring

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CERTIFICATE OF COMPLIANCE

I certify under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure that this Appellant's Reply Brief conforms to the requirements of Rules 315(d), 341(a) and (b). The length of this brief, excluding the cover, statement of points and authorities, certificate of compliance and the certificate of service, is 6 pages.

BY:

/s/ Berton N. Ring
Berton N. Ring, P.C

Berton N. Ring
Berton N. Ring, P.C., #6183351
123 West Madison, 15th Floor
Chicago, IL 60602
(312) 781-0290
bring@bnrpc.com