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**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA,**

GATOR COIN II, INC.

Plaintiff,

and

BLUE SKY GAMES, LLC,

Intervenor,

v.

Case No. 2015-CA-2629

**FLORIDA DEPARTMENT
OF BUSINESS AND PROFESSIONAL
REGULATION, DIVISION OF
ALCOHOLIC BEVERAGES AND TOBACCO,**

Defendant,

_____ /

**ORDER ON MOTION FOR REHEARING
AND FINAL DECLARATORY JUDGMENT**

This action was tried by the Court, on February 8 and 9, 2017, on Plaintiff's Complaint for Declaratory Judgment. The action was reheard on June 19, 2017, on the motion of Defendant Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco. Also set for hearing on June 19, 2017, was the Seminole Tribe of Florida's Motion to Intervene. However, the Seminole Tribe withdrew its motion and requested to be heard as *amicus curiae*. This Court, having received evidence, ^{at trial} heard argument of counsel for all parties and friend of the court, and being otherwise advised, finds as follows:

1. Plaintiff Gator Coin II, Inc. ("Plaintiff" or "Gator Coin"), is a business that leases coin-operated machines and games. At issue in this matter is a computer game leased and operated by Plaintiff which is manufactured by Intervenor Blue Sky Games, LLC ("Intervenor"). The game is identified by Intervenor as "multiple game system with preview feature version

V.K.067”, commonly known as Blue Sky Games Multi Gaming System Version 67 (“Version 67”).

2. Defendant Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (“Defendant” or “Division”), is the state agency charged with the licensing, regulation and enforcement of Florida’s alcoholic beverage laws pursuant to section 20.165(2)(b), Florida Statutes, and chapters 561-568, Florida Statutes.

3. While conducting inspections pursuant to its legislatively proscribed duties, the Division identified Version 67 machines as slot machines pursuant to Florida law. The Division warned its licensees that if the machines were not removed from the licensed premises, then the licensees may be subject to administrative and criminal sanctions.

4. Plaintiff and Intervenor contend that the machines do not meet the broad definition in section 849.16, Florida Statutes, because they contain a feature that allows the user to see whether they will win or lose before they pay to play a game.

5. The Division contends that the software is a slot machine or device because upon activation by the player, the software may entitle the player to something of value either by any element of chance, or through any outcome unpredictable by the player.

6. The Seminole Tribe of Florida (“the Tribe”) supports the Division’s contention that the software is a slot machine or device, but further contend that the system and play pattern created by the software is an effort to evade Florida’s prohibitions on gambling and has been recognized by courts across the country as such.

7. On March 9, 2017, this Court entered its Order for Declaratory Judgment (the “Judgment”), finding, *inter alia*, that this Court had jurisdiction to issue a declaratory judgment; that Plaintiff and Intervenor had standing to bring this action; that Intervenor’s “Multi Gaming

System, Version 67” was not an illegal slot machine as defined by Florida Statutes; that the presumption set forth in section 849.16(3), Florida Statutes, was rebutted by Plaintiff and Intervenor; and reserving jurisdiction to consider awards of costs of suit, in the event Plaintiff or Intervenor move for the same.¹

8. On March 24, 2017, the Division timely filed a Motion for Rehearing in this matter. On March 31, 2017, the Tribe filed a Memorandum of Law in Support of Rehearing. On June 6, 2017, the Tribe submitted a Revised Memorandum of Law in Support of Rehearing, citing to a number of cases from other jurisdictions that had not previously been brought to the Court’s attention.

9. Section 849.16(1), Florida Statutes, reads as follows:

As used in this chapter, the term “slot machine or device” means any machine or device or system or network of devices that is adapted for use in such a way that, upon activation, which may be achieved by, but is not limited to, the insertion of any piece of money, coin, account number, code, or other object or information, such device or system is directly or indirectly caused to operate or may be operated and if the user, whether by application of skill or by reason of any element of chance or any other outcome unpredictable by the user, may:

(a) Receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value or which may be given in trade; or

(b) Secure additional chances or rights to use such machine, apparatus, or device, even though the device or system may be available for free play or, in addition to any element of chance or unpredictable outcome of such operation, may also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value. The term “slot machine or device” includes, but is not limited to, devices regulated as slot machines pursuant to chapter 551.

¹ Though the Court entered a second order, a Final Declaratory Judgment, on March 15, 2017, there appears to be no substantive difference between the two orders apart from the title.

10. Further, section 849.16(3), Florida Statutes, creates a rebuttable presumption that certain machines, devices or systems are slot machines pursuant to Florida law through the following language:

There is a rebuttable presumption that a device, system, or network is a prohibited slot machine or device if it is used to display images of games of chance and is part of a scheme involving any payment or donation of money or its equivalent and awarding anything of value.

11. The Court finds that the machines at issue display images of games of chance and, upon payment of money by the user, provide the user with an opportunity to win money. Since the machines fall within the parameters of section 849.16(3), Florida Statutes, there is a rebuttable presumption that they are prohibited slot machines. The question is whether the evidence presented at trial is sufficient to overcome the statutory presumption. The Court finds that it is not.

12. The outcome of each and every game created by the Version 67 software is selected from an array of several million possible outcomes by a pseudorandom number generator algorithm ("PRNG") within the software. The player has no influence on the result of the game and once an outcome is selected by the PRNG, the player cannot alter the result in any fashion. ~~essentially, the machine plays itself.~~ J a

13. Accordingly, the statute is satisfied regardless of whether or not the user can learn the outcome before placing a bet. In fact, the statute does not even require that a bet be placed. So long as the user may be entitled to a reward based upon an element of chance or unpredictable outcome – regardless of when that outcome is generated or made known – the statutory definition of a slot machine is satisfied.

14. Additionally, the Court finds that the Version 67 software is designed and programmed to achieve a certain, particular win/loss ratio over the life cycle of the game to ensure a profit to the software's operator.

15. The Court finds that the outcome of each game is displayed to the player through the mandatory preview feature. However, this does not mean that the outcome of each game is known or predictable by the player at the time the outcome is determined. The preview feature only displays outcomes that have been previously generated by the PRNG; at all times prior to the outcome being selected and consequently displayed, the outcome is unknown and unpredictable to the player. Additionally, the user cannot play game 2 or learn its outcome until game 1 is completed.

16. In order to make money, Plaintiff and Intervenor must depend upon the willingness of users to knowingly play losing games. The Vice President of Gator Coin suggested that persons will do so because they like to see flashing lights and spinning reels. The Court finds more credible the testimony of Intervenor's President, who testified that people play losing games in the hopes of winning "the next time or the next time or the next time." There is nothing in the language of section 849.16, Florida Statutes, that suggests that each game must be analyzed in isolation without considering its relationship to subsequent games or outcomes. Because each game unlocks the opportunity to play subsequent games, the outcomes of which are unknowable at the time the first game is played, and because such subsequent games offer the user an opportunity to receive something of value, the machines are slot machines within the meaning of section 849.16, Florida Statutes.²

² As explained in *Ferguson v. State*, 99 N.E. 806, 807 (Ind. 1912), "the fact that the machine would indicate the reward before it was played, makes no difference. The inducement for each play was the chance that by that play the machine would be set to indicate that it would pay checks on the following play. The thing that attracted the player was the chance that ultimately he would receive something for nothing."

17. Precedent requires that when a Florida court is tasked with determining whether a certain machine or device is a slot machine, the court must examine the machine independently of the player to determine whether chance is inherent in the machine itself. See *Deeb v. Stoutamire*, 53 So. 2d 873 (Fla. 1951).

18. Further, a machine which awards a prize that plays itself and is set to record a predetermined win/loss ratio is considered a slot machine or device pursuant to Florida law. See *Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco v. Broward Vending, Inc.*, 696 So. 2d 851 (Fla. 4th DCA 1997).

19. The Court finds that the Version 67 software may, upon activation, award a player something of value.

20. The Court finds that Version 67 software is not a game of skill.

21. The Court finds that the Version 67 software may award a player something of value through the application of an element of chance.

22. The Court finds that the Version 67 software may award a player something of value as a result of an outcome unknown to the player at the time the outcome is determined.

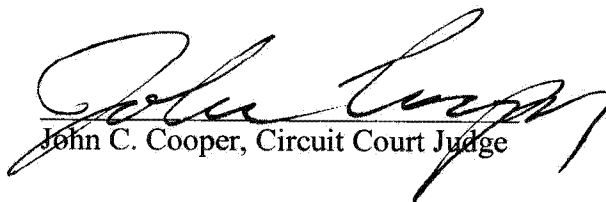
23. Finally, the Court recognizes that in order to have a chance to receive an outcome other than what is currently displayed by the preview feature, the player must commit money to the machine to be privy to the next preview. This play pattern has been recognized, in cases provided to the Court by *Amici*, as an illegal gaming scheme designed to circumvent gambling prohibitions. The preview feature in the Version 67 software serves a similar function.

24. The Court's ruling, made on June 19, 2017, upon the Division's Motion for Rehearing, is incorporated into this Judgment by reference. The transcript of the proceedings from June 19, 2017, is attached as Exhibit A to this Judgment.

It is therefore ORDERED and ADJUDGED that:

- A. The Court has jurisdiction to issue a declaratory judgment on the facts of this case.
- B. Plaintiff and Intervenor have standing to bring this action.
- C. The Division's Motion for Rehearing is GRANTED.
- D. The Seminole Tribe of Florida is recognized as *amicus curiae* in this matter.
- E. The Order for Declaratory Judgment issued by this Court on March 9, 2017, and the Final Declaratory Judgment issued by this Court on March 15, 2017, are VACATED.
- F. The presumption set forth in section 849.16(3), Florida Statutes, is not overcome by the evidence presented by Plaintiff and Intervenor.
- G. The software identified as "multiple game system with preview feature version V.K.067", commonly known as Blue Sky Games Multi Gaming System Version 67, is a slot machine or device as defined by section 849.16(1), Florida Statutes.

DONE and ORDERED in chambers, at the Leon County Courthouse, Tallahassee, Florida, on this 10th day of July, 2017.


John C. Cooper, Circuit Court Judge

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