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No. 3--09--1038

Order filed January 21, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

EMPRESS CASINO JOLIET)	Appeal from the Circuit Court
CORPORATION, an Illinois)	of the 12th Judicial Circuit,
corporation, DES PLAINES)	Will County, Illinois
DEVELOPMENT LIMITED)	
PARTNERSHIP, an Illinois)	
limited partnership d/b/a)	
Harrah's Casino Cruises)	
Joliet, HOLLYWOOD CASINO-)	
AURORA, INC., an Illinois)	
corporation, and ELGIN)	
RIVERBOAT RESORT-RIVERBOAT)	
CASINO, an Illinois general)	
partnership d/b/a Grand)	
Victoria Casino,)	
)	
Plaintiffs-Appellees,)	
)	
v.)	No. 06--CH--1294
)	
ALEXI GIANNOULIAS, solely in)	
his official capacity as)	
Treasurer of the State of)	
Illinois, and THE ILLINOIS)	
RACING BOARD,)	
)	
Defendants-Appellants,)	

)	
and)	
)	
BALMORAL RACING CLUB, INC.,)	
an Ohio corporation,)	
HAWTHORNE RACE COURSE, INC.,)	
an Illinois corporation,)	
MAYWOOD PARK TROTTING)	
ASSOCIATION, INC., an)	
Illinois corporation,)	
NATIONAL JOCKEY CLUB, an)	
Illinois corporation, and)	
ILLINOIS HARNESS HORSEMEN'S)	
ASSOCIATION, an Illinois not-)	
for-profit corporation,)	
)	
Intervenor)	Honorable Barbara Petrungaro,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Carter and Justice Lytton concurred in the
judgment.

ORDER

Held: The trial court erred in finding the State Officers and Employees Money Disposition Act and the Illinois Horse Racing Act authorized the payment of interest to race tracks on moneys deposited into the protest fund by various casinos. Reversed.

This appeal arises from an order of the circuit court of Will County that directs defendants, Alexi Giannoulas, in his official capacity as Treasurer of the State of Illinois, and the Illinois Racing Board (defendants), to pay interest on money owed

to intervenors (the race tracks), Balmoral Racing Club, Inc., an Ohio corporation, Hawthorne Race Course, Inc., an Illinois corporation, Maywood Park Trotting Association, Inc., an Illinois corporation, National Jockey Club, an Illinois corporation, and Illinois Harness Horsemen's Association, an Illinois not-for-profit corporation. Defendants appeal, claiming the circuit court misinterpreted both the State Officers and Employees Money Disposition Act (Money Disposition Act) (30 ILCS 230/2a et seq. (West 2008)) and the Illinois Horse Racing Act of 1975 (Horse Racing Act) (230 ILCS 5/1 et seq. (West 2006)).

FACTS

Our 94th General Assembly passed Public Act 94-804, effective May 26, 2006, and codified at 230 ILCS 5/54.5 (West 2006) which created a fund known as the Horse Racing Equity Trust Fund. (Horse Racing Fund) 230 ILCS 5/54.5 (West 2006). The fund, in essence, took money from certain casinos and gave it to race tracks.

The casinos challenged the constitutionality of Public Act 94-804, claiming it violated the takings, due process, public funds, uniformity and equal protection clauses of the Illinois Constitution. *Empress Casino Joliet Corp. v. Giannoulis*, 231 Ill. 2d 62 (2008). The casinos also alleged it violated the due

process and equal protection clauses of the United States Constitution. The circuit court agreed with the casinos and found that Public Act 94-804 violated the uniformity clause of the Illinois Constitution. *Empress Casino*, 231 Ill. 2d at 68. Defendants filed a direct appeal to our supreme court which ultimately held Public Act 94-804 did not violate either the Illinois Constitution or United States Constitution. *Empress Casino*, 231 Ill. 2d at 65.

In reversing the trial court, our supreme court noted:

"The Act requires those casinos with AGRs over \$200 million to daily contribute 3% of their AGR into the Horse Racing Equity Trust Fund. The Act provides that the monies (along with interest) shall be distributed, within 10 days of deposit into the Fund ***." *Empress Casino*, 231 Ill. 2d at 66.

During this dispute, the casinos deposited the surcharges into a "protest fund" pursuant to section 2a of the Money Disposition Act (30 ILCS 230/2a (West 2008)). On remand after our supreme court's ruling in *Empress Casino*, the circuit court ordered the State Treasurer to distribute the moneys in the protest fund, totaling \$76,000,000, to the Horse Racing Fund.

The race tracks entitled to that money then claimed that the State was also required to pay interest on the disputed funds for the period when the moneys were in the protest fund. The circuit court agreed. The circuit court ordered the payment of interest to be paid by the State without specifying the rate of interest. This is the defendants' appeal from that order.

ANALYSIS

The trial court found:

"A review of the language of the statutes cited establishes unambiguously the intent of the General Assembly. The General Assembly clearly and unambiguously provided for payment of accrued interest on monies paid under the 2006 Act. 230 ILCS 5/54.75(b). Further, the General Assembly clearly stated within the Protest Monies Act that interest would be paid on any authorized payment. 30 ILCS 203/2a."

This appeal involves questions of statutory interpretation which we review *de novo*. *Blum v. Koster*, 235 Ill. 2d 21 (2009). To resolve this appeal, we must interpret section 2a of the Money Disposition Act (30 ILCS 230/2a (West 2008)) and section 54.5(b)

of the Horse Racing Act. 230 ILCS 5/54.5(b) (West 2006).

A. Section 2a of the Money Disposition Act

Section 2a reads in its entirety as follows:

"Every officer, board, commission, commissioner, department, institute, arm, or agency to whom or to which this Act applies is to notify the State Treasurer as to money paid to him, her, or it under protest as provided in Section 2a.1, and the Treasurer is to place the money in a special fund to be known as the protest fund. At the expiration of 30 days from the date of payment, the money is to be transferred from the protest fund to the appropriate fund in which it would have been placed had there been payment without protest unless the party making that payment under protest has filed a complaint and secured within that 30 days a temporary restraining order or a preliminary injunction, restraining the making of that transfer and unless, in addition, within that 30 days, a copy of the temporary restraining order or preliminary injunction has been served upon the State Treasurer and also upon

the officer, board, commission, commissioner, department, institute, arm, or agency to whom or to which the payment under protest was made, in which case the payment and such other payments as are subsequently made under notice of protest, as provided in Section 2a.1, by the same person, the transfer of which payments is restrained by such temporary restraining order or preliminary injunction, are to be held in the protest fund until the final order or judgment of the court. The judicial remedy herein provided, however, relates only to questions which must be decided by the court in determining the proper disposition of the moneys paid under protest. Any authorized payment from the protest fund shall bear simple interest at a rate equal to the average of the weekly rates at issuance on 13-week U.S. Treasury Bills from the date of deposit into the protest fund to the date of disbursement from the protest fund. In cases involving temporary restraining orders or preliminary injunctions entered March 10, 1982, or thereafter, pursuant to this Section,

when the party paying under protest fails in the protest action the State Treasurer shall determine if any moneys paid under protest were paid as a result of assessments under the following provisions: the Municipal Retailers' Occupation Tax Act, the Municipal Service Occupation Tax Act, the Municipal Use Tax Act, the Municipal Automobile Renting Occupation Tax Act, the Municipal Automobile Renting Use Tax Act, Section 8--11--9 of the Illinois Municipal Code, the Tourism, Conventions and Other Special Events Promotion Act of 1967, the County Automobile Renting Occupation Tax Act, the County Automobile Renting Use Tax Act, Section 5--1034 of the Counties Code, Section 5.01 of the Local Mass Transit District Act, the Downstate Public Transportation Act, Section 4.03 of the Regional Transportation Authority Act, subsections (c) and (d) of Section 201 of the Illinois Income Tax Act, Section 2a.1 of the Messages Tax Act, Section 2a.1 of the Gas Revenue Tax Act, Section 2a.1 of the Public Utilities Revenue Act, and the Water Company Invested Capital Tax Act. Any such moneys paid

under protest shall bear simple interest at a rate equal to the average of the weekly rates at issuance on 13-week U.S. Treasury Bills from the date of deposit into the protest fund to the date of disbursement from the protest fund." 30 ILCS 230/2a (West 2008).

We must ascertain and give effect to the intent of the legislature. *MD Electrical Contractors, Inc., v. Abrams*, 228 Ill. 2d 281 (2008). The surest means of effectuating this goal is to simply read the statutory language itself and give the words their plain and ordinary meaning. *MD Electrical Contractors*, 228 Ill. 2d at 287. "However, it is not sufficient to read a portion of the statute in isolation. We must, instead, read the statute in its entirety, keeping in mind the subject it addresses and the legislature's apparent objective in enacting it. [Citation.] Where the language of the statute is clear and unambiguous, we must apply it as written, without resort to other tools of statutory construction. [Citation.] Generally, the language of a statute is considered ambiguous when it is capable of being understood by reasonably well-informed persons in two or more different senses." *MD Electrical Contractors*, 228 Ill. 2d at 287-88.

We conclude that section 2a is capable of being understood in two or more different senses by reasonably well-informed people and, therefore, is ambiguous. Leading us to this conclusion is the fact that section 2a contains two almost identical sentences concerning the payment of interest:

"Any authorized payment from the protest fund shall bear simple interest at a rate equal to the average of the weekly rates at issuance on 13-week U.S. Treasury Bills from the date of deposit into the protest fund to the date of disbursement from the protest fund. ***

Any such moneys paid under protest shall bear simple interest at a rate equal to the average of the weekly rates at issuance on 13-week U.S. Treasury Bills from the date of deposit into the protest fund to the date of disbursement from the protest fund." 30 ILCS 230/2a (West 2008).

The race tracks argue that the legislature could not be more clear in its pronouncement that "any authorized payment" from the protest fund shall include interest. We acknowledge the attractiveness of the race tracks' position. It certainly is not

totally unreasonable given the legislature's decision to use the phrase "any authorized payment ***." However, as noted above, one should not read any individual portion of a statute in isolation when attempting to determine the intent of the legislature. *MD Electrical Contractors*, 228 Ill. 2d at 287-88. If the race tracks' interpretation is correct, there would be no need for the remainder of the statute.

After the first sentence directing interest to be paid on "any authorized payment" from the fund, the legislature continues the statute by imposing certain duties on the State Treasurer in the event that the person paying under protest "fails in the protest action ***." 30 ILCS 230/2a (West 2008). In that event, the State Treasurer must determine whether the moneys are owed to a public entity under any one of 18 different State statutes. 30 ILCS 230/2a (West 2008). If they are, then the State Treasurer must ensure that "such moneys paid" include interest. 30 ILCS 230/2a (West 2008). The race tracks' interpretation of the statute renders superfluous every word of the statute following the initial sentence regarding payment of interest. A court, when construing a statute, should avoid rendering any part of it meaningless or superfluous. *Kraft, Inc., v. Edgar*, 138 Ill. 2d 178 (1990). The race tracks' interpretation does just that,

renders almost half the statute meaningless and superfluous.

The first sentence in the statute pertaining to payment of interest directly follows language detailing the process through which one initiates and perfects his protest. The second sentence in the statute that pertains to the payment of interest directly follows language detailing the duties of the State Treasurer in the event that a party "fails in the protest action ***." This statutory scheme leads us to conclude and find that the legislature intended payment of interest from the protest fund in two instances: (1) when a party protests and is successful in its protest; and (2) when a party is unsuccessful in its protest and the moneys protested are to be distributed via one of the enumerated statutes outlined in section 2a. The protesters in this instance were the casinos, not the race tracks. As such, no successful protest was made. Moreover, payments made to or disbursed by the Horse Racing Fund (230 ILCS 5/54.5 (West 2006)) are not discussed in section 2a. Therefore, we hold the trial court erred in finding that section 2a (30 ILCS 230/2a (West 2008)) mandated the State Treasurer pay interest to the race tracks on disbursements from the protest fund.

B. Section 54.5 of the Horse Racing Act

Initially, we must clear up some confusion as the trial

court and parties, at times, refer to section 54.75 of the Horse Racing Act (230 ILCS 5/54.75 (West 2008)) and at other times refer to section 54.5 of the Horse Racing Act. 230 ILCS 5/54.5 (West 2006). The legislature originally formed the Horse Racing Equity Trust Fund through Public Act 094-0804 which created 230 ILCS 5/54.5. Section 54.5 became effective after being signed by the governor on May 26, 2006. The Public Act that created this statute (Public Act 94-804) contained a sunset provision indicating, "This Section is repealed 2 years after the effective date of this amendatory Act of the 94th General Assembly." 230 ILCS 5/54.5(d) (West 2006). The legislature then passed Public Act 95-1008 which created 230 ILCS 5/54.75 that became effective on December 15, 2008: the date signed by the governor. Sections 54.75 and 54.5 contain almost exactly the same language. To be clear, however, this appeal involves section 54.5 of the Horse Racing Act. That section reads, in pertinent part, as follows:

"(a) There is created a Fund to be known as the Horse Racing Equity Trust Fund, which is a non-appropriated trust fund held separate and apart from State moneys. The Fund shall consist of moneys paid into it by owners licensees under the Riverboat Gambling Act for the purposes

described in this Section. The Fund shall be administered by the Board. Moneys in the Fund shall be distributed as directed and certified by the Board in accordance with the provisions of subsection (b).

(b) The moneys deposited into the Fund, plus any accrued interest on those moneys, shall be distributed within 10 days after those moneys are deposited into the Fund as follows ***." 230 ILCS 5/54.5 (West 2006).

The dispute concerning this statute centers on its use of the phrase "plus any accrued interest on those moneys ***." Defendants maintain that this phrase refers to interest accruing on moneys while they are in the Horse Racing Fund. The race tracks assert that the trial court correctly found the phrase refers to all surcharges remitted by the casinos to the State, regardless of when they were deposited into the Horse Racing Fund.

Defendants posit that language contained within the statute clearly and unambiguously indicate that the phrase concerning interest does not apply until money is actually paid into the Horse Racing Fund. Defendant's note that section 54.5(b)

indicates it applies to "moneys deposited into the Fund" (230 ILCS 5/54.5(b) (West 2006)) and, furthermore, that the Horse Racing Fund only "consist[s] of moneys paid into it by owners licensees ***." Therefore, defendants submit, section 54.5 (b)'s reference to interest cannot attach to money until it is "paid into" the fund.

The race tracks disagree and note section 54.5 (b) does not state that interest "starts to accrue only when moneys are deposited into the Horse Racing Fund." Claiming the term "those moneys" refers to moneys the casinos "paid into" the Horse Racing Fund, the race tracks claim that a plain reading of the statute leads one to conclude that interest begins to accrue the minute it is " 'paid' by the Casinos to the State." Noting section 54.5 requires the Board to disburse the moneys in the Horse Racing Fund within ten days, the race tracks claim it is "inconceivable" that the legislature intended the race tracks to receive the benefit of 10 days worth of interest, yet deprive them of years worth of interest that accrued while the moneys sat in the protest fund.

Neither the defendants' interpretation of section 54.5 nor the race tracks' interpretation are beyond reason. Again, the language of a statute is considered ambiguous when it is capable

of being understood by reasonably well-informed persons in two or more different senses." *MD Electrical Contractors*, 228 Ill. 2d at 287-88. We find the language at issue ambiguous. We note it fails to define exactly when interest on the moneys deposited into the Horse Racing Fund starts to accrue but we also note it fails to specify an interest rate at which interest accrues.

Nevertheless, the language of the statute itself leads us to believe that the legislature intended interest to accrue on moneys within the Horse Racing Fund only during the time the moneys are actually within the Horse Racing Fund. Section 54.5 (a) notes the "Fund shall consist of moneys paid *into* it" (Emphasis added.) (230 ILCS 5/54.5(a) (West 2006)) then section 54.5 (b) distributes the "moneys deposited into the Fund ***" plus interest. 230 ILCS 5/54.5 (b) (West 2006). Section 54.5 consistently refers to the moneys that have either been "paid into" the Horse Racing Fund or "deposited into" it. Those words, chosen by the legislature, signify to us that the legislature intended the entire section, including the phrase "plus any accrued interest on those moneys," to only apply to moneys once they have been deposited into the Horse Racing Fund. As such, we find the trial court erred in directing defendants to pay interest on the moneys during the time the moneys resided in the

protest fund.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Will County is reversed.

Reversed.