

Oct. 5. 2010 4:32PM

No. 6957 P. 1

IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT IN AND FOR MARION  
COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO.: 2010-1543-CF-B-X

Plaintiff,

v.

JEANEEN E. CRISANTE,

Defendant.

**ORDER DENYING DEFENDANT'S MOTION TO DISMISS**

THIS CAUSE came to be heard upon the Defendant's Motion to Dismiss dated September 16, 2010. The State a traverse dated September 28, 2010. The court heard oral argument on the motion to dismiss on September 28, 2010. The court, after reviewing the motion and the State's traverse, and after considering the arguments of counsel, for the reasons below finds that the defendant's motion should be DISMISSED.

The parties essentially agree to the facts of this case with the exception that the State in its traverse denies that the defendant's actions in this case are a game promotion as defined in Florida Statute §849.094.

The court in considering the facts presented as laid out in the defendant's motion compares the facts with the case presented by the State out of the State of Alabama which the court finds persuasive. *Barber v. Jefferson County Racing Association*, 960 So.2d 599 (S.Ct. Ala. 2007), wherein the Alabama Supreme Court considered essentially the same issues that have been raised by the defendant in this case in determining whether or not a computer system is or can be a slot machine and whether or not using the computer rises to the level of gambling.

Oct. 5. 2010 4:32PM

No. 6957 P. 2

The court finds that the facts as outlined by the defendant are very similar to the facts as outlined in *Barber*.

In this case now before the court, the defendant operated a company known as Marion Internet Services, Inc., in which Marion Internet sold long distance phone cards and depending on how much time you bought on the long distance phone card you were given x-number of credits to use on a sophisticated computerized system where you could wager your credits for a chance to win a prize. Even though Marion Internet legally sold long distance telephone time, tagged to this product was credits wherein the consumers could wager their credits for a chance to win a prize.

The system was set up with 75 desk top computers that would display various configurations simulating spinning wheels, cartoon images, similar to what would be shown in Las Vegas or Biloxi, Mississippi in casinos. These computers were tied to a server or main frame wherein the chance and/or computerized selection was made to determine whether or not the user would win a prize. The user had no control over whether or not they would win a prize.

This operation was very similar to the operation in *Barber* except that *Barber* provided a purchase of cyber time, i.e., Internet time which was tied to free credits in which the user could use what was called a reader which was tied to a main frame wherein the user could place a bet using free credits which came with the purchase of cyber time to determine whether or not they won a prize.

The court in *Barber* considered whether or not the free credits that were issued when the user purchased cyber time, were a consideration for a chance to win a prize. In *Barber*, the defendant argued that the consumers did not pay for the sweepstakes or mega sweeps entries, but only paid for cyber time which was sold at fair market value. This is the same argument that is

Oct. 5. 2010 4:32PM

No. 6957 P. 3

made by the defendant here. The court in *Barber* stated that the owner's argument however, ignores the last sentence of Section 13 A-12-20(10) "nor is it any less a slot machine because apart from its use or adaptability as such it may also sell or deliver something of value on a basis other than chance."

The defendant is charged with possession of a slot machine under *Florida Statute* §849.16. At page 20 of the defendant's brief, the defendant notes 849.16(b) states: secure additional chances or rights to use such machine, apparatus, or device, even though it may, in addition to any element of chance or unpredictable outcome of such operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.

The court finds that 849.16 is similar to the Alabama statute, ~~§13A-12-20(1)~~ in that it is still a slot machine even if it also can deliver something of value on a basis other than chance.

Therefore, the court finds for purposes of this motion to dismiss that the system utilizing the 75 computer desk tops with magnetic card readers tied to a server and/or main frame which by use of software and computer codes determine the chance that a user would have in winning a prize. Therefore, the system does qualify for purposes of this motion to dismiss as a slot machine.

The defendant also argues that the operation involved with Marion Internet is no different than McDonald's hamburgers or Coca-cola offering a sweepstakes in the sale of their products.

The court disagrees based on the holding in *Barber at 612*, wherein the court made the distinction that promotional sweepstakes occasionally offered by fast food chains, or in connection with candy, sodas, miscellaneous food or other established retail products, is typically, "limited", as opposed to the duration of the mega sweeps, which is indefinite. The payout percentage and duration of the operation are indicative of "the true purpose of the game".


Oct. 5. 2010 4:32PM

No. 6957 P. 4

The court finds here for purposes of this motion to dismiss, that Marion Internet was not just in the business of selling long distance telephone time, they are also in the business of offering a chance to win a prize for consideration on a long term basis which was apparent by the fact that they set up 75 computer terminals with electric magnetic readers for those who participated in the sweepstakes game and that this was not a temporary promotion.

Based on the above, the court DENIES the defendant's motion to dismiss relying on *Barber v. Jefferson County Racing Association*.

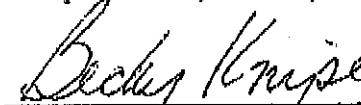
DONE AND ORDERED in Chambers at Ocala, Marion County, Florida this the 4<sup>th</sup> day of October, 2010.



EDWARD L. SCOTT

Circuit Court Judge

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. Mail/Hand Delivery/Facsimile to JEREMY T. POWERS, ESQ. and MARK SIMPSON, ESQ., Assistant State Attorney, 110 N.W. 1<sup>st</sup> Avenue, Ste. 5000, Ocala, FL 34475 and to KELLY B. MATHIS, ESQ., and ADAM REGAR, ESQ., 1200 Riverplage Blvd., Ste. 902, Jacksonville, FL 32207 on this the 4 day of October, 2010.



Becky Knips, Judicial Assistant