

THE SUPREME COURT OF THE STATE OF NEVADA

ANNA LISA BARTON,

No. 35555

Appellant,

vs.

BLUE DIAMOND HOTEL & CASINO, INC.,  
D/B/A BOOMTOWN LAS VEGAS AND  
CASINO DATA SYSTEMS,

Respondents.

**FILED**

**JUL 10 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying judicial review of a Nevada State Gaming Control Board decision. The Board denied Anna Lisa Barton's claim that she had won a primary, rather than a secondary, slot machine "jackpot."

Factual background

The "Cool Millions" slot machine is a three-reel game apparatus manufactured by Sigma Game, Inc. The game, part of a statewide, multi-site linked slot system operated by respondent Casino Data Systems ("CDS"), offers primary and secondary progressive jackpots. When a player wagers three coins and aligns three "Cool Millions" duck symbols on the payline, the player wins the game's primary jackpot. (The "Cool Millions" symbol depicts a duck wearing sunglasses and the words "Cool Millions.") The machine awards a secondary jackpot when the player aligns three "Double Jackpot" symbols (depicting a duck with a different appearance and the words "Double Jackpot").

On May 9, 1996, CDS installed four such machines at the Boomtown Casino ("Boomtown") in Las Vegas. The awards schedule displayed on the machines correctly corresponded to the game program, under which an alignment of three "Cool

Millions" duck symbols on the "pay line" would result in the primary jackpot, and alignment of the three Double "Jackpot" duck symbols would result in the secondary jackpot.

A few months after CDS installed the games, the awards display placard on machine number 5455 was damaged. On July 31, 1996, a CDS worker erroneously replaced the broken display placard with a placard from another version of the "Cool Millions" game. The placard did not accurately correspond to the computer program; rather, the new awards schedule represented that an alignment of three blue seven ("7") symbols - not "Double Jackpot" duck symbols - would result in the secondary jackpot. In fact, the new schedule omitted any depiction of, or reference to, the "Double Jackpot" duck symbol.

Despite this difference, the two award displays were largely identical. In particular, both displays indicated that a player could win the primary jackpot by playing the maximum number of coins and aligning three "Cool Millions" duck symbols on the payline.

The wrong awards schedule remained on machine 5455 for fifty-one days. On September 20, 1996, appellant Anna Barton patronized Boomtown and played the machine. After four or five minutes of play, Barton aligned three "Double Jackpot" duck symbols on the machine payline. The secondary progressive jackpot meter locked up, indicating that Barton had won \$4,427.00.

Boomtown employees promptly responded and discovered that the slot machine displayed an incorrect awards schedule. They explained to Barton that the awards schedule was erroneous. They further explained that, although the awards schedule indicated that a player needed three blue 7s to win the secondary jackpot and Barton had aligned three "Double

Jackpot" duck symbols instead, the casino would nevertheless pay Barton the secondary award of \$4,427.00.

Barton declined the payment, arguing that because the awards schedule indicated that a player had to align three ducks (as she had), she was entitled to the primary jackpot - which, at that time, was approximately \$8.6 million.<sup>1</sup>

Pursuant to NRS 463.362, Boomtown promptly notified the Gaming Control Board (the "Board") of the dispute. A Board agent reviewed the claim and concluded that Barton had won the secondary jackpot, not the primary jackpot. The agent informed Barton of his decision on October 9, 1996. On October 25, 1996, Barton filed a petition with the Board requesting a hearing to reconsider the agent's decision.

On March 2, 1999, a hearing examiner heard Barton's appeal. He ruled that, based on the evidence, Barton was entitled to no award. The examiner based this ruling on the fact that the schedule posted upon the machine, although technically erroneous, made clear that jackpots would only be awarded for aligning three "Cool Millions" duck symbols (the primary jackpot), or upon alignment of three 7s; not, as here, three "Double Jackpot" duck symbols. The examiner noted that Barton "can no more be awarded a jackpot for the alignment of three Double Jackpot symbols than she could for an alignment of three lemons, or any other symbols that did not appear on the awards schedule."

---

<sup>1</sup>Barton now claims she is entitled to \$8,592,683.19. The exact amount of Barton's claim is problematic because the primary jackpot progressive meter did not lock up when Barton aligned the three "Double Jackpot" duck symbols. Barton appears to have obtained the figure of \$8,592,683.19 from a contemporaneous photograph.

The \$8 million claim represents the lowest amount that Barton has heretofore asserted in this dispute. She has, at different times, claimed entitlement to \$68,721,465.52, \$34,370,732.76 and \$17,185,366.38.

The hearing examiner went on to conclude, however, that the casino made a "mistake" in displaying the incorrect awards schedule and, accordingly, Barton was "wronged." He recommended that Barton was entitled to collect the secondary jackpot award of \$4,427.00.

The Board reviewed and unanimously adopted the hearing examiner's opinion and recommendation. Barton filed a petition for judicial review, per NRS 463.3662. The district court denied the petition and Barton timely filed this appeal. We affirm.

Standard of review

Pursuant to NRS 463.361(2)(a), the Board has exclusive jurisdiction to resolve patrons' disputed claims for payments of "gaming debts that are not evidenced by a credit instrument." Once the Board resolves such disputes, any party aggrieved by the Board's decision may obtain judicial review pursuant to NRS 463.3666(3) and subject to the following limitations:

The reviewing court may affirm the decision and order of the board or the hearing examiner, or it may remand the case for further proceedings or reverse the decision if the substantial rights of the petitioner have been prejudiced because the decision is:

. . . . .

- (c) Made upon unlawful procedure;
- (d) Unsupported by any evidence; or
- (e) Arbitrary or capricious or otherwise not in accordance with law.

Because a disputed slot machine jackpot is a gaming debt not evidenced by a credit instrument, a high degree of judicial deference, per NRS 463.3666(3), applies in this

matter.<sup>2</sup> "[I]n spite of this [rigorous] standard, this court is free to examine purely legal questions decided at the administrative level."<sup>3</sup> "Questions of law are reviewed de novo."<sup>4</sup>

Barton contends that the Board's order was arbitrary and capricious because the hearing examiner erred, as a matter of law, in construing the terms of the unilateral gaming contract entered into by Barton and the respondents.

As a preliminary matter, the parties both maintain that this case is controlled by fundamental principles of contract law. We agree. Our case decisions demonstrate that playing a slot machine is legally indistinct from a traditional unilateral contract,<sup>5</sup> and at least one other court that has considered the question concurs.<sup>6</sup>

Although the parties in this appeal agree that the disputed game play must be analyzed within a common law contracts framework, they disagree as to the terms of the gaming contract at issue. Barton argues that she is entitled to the primary jackpot award because the terms of the gaming contract - as evidenced by the awards schedule, the machine's

---

<sup>2</sup>See Harrah's Club v. State Gaming Control Bd., 104 Nev. 762, 766 P.2d 900 (1988).

<sup>3</sup>Sengel v. IGT, 116 Nev. \_\_\_, \_\_\_, 2 P.3d 258, 262 (2000) (quoting Redmer v. Barbary Coast Hotel & Casino, 110 Nev. 374, 378, 872 P.2d 341, 344 (1994)).

<sup>4</sup>SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993).

<sup>5</sup>See, e.g., Sengel, 116 Nev. at \_\_\_, 2 P.3d at 258; Redmer, 110 Nev. at 374, 872 P.2d at 341.

<sup>6</sup>See, e.g., Marcangelo v. Boardwalk Regency Corp., 847 F. Supp. 1222, 1229 n.11 (D. N.J. 1994), aff'd, 47 F.3d 88 (3d Cir. 1995) (The relationship between a patron and a casino is "a unilateral contract between the parties created by the placing and acceptance of a bet."); see also Mark B. Wessman, Is "Contract" Theory the Name of the Game? Promotional Games as Test Cases for Contract Theory, 34 Ariz. L. Rev. 635, 643-44, 655 (1992) (and cases cited therein).

reel strips, and its operation - provided that Barton's alignment of three "Double Jackpot" duck symbols constituted a primary jackpot award.

Specifically, Barton contends that, although the awards schedule made no mention of the Double Jackpot symbol, the "Double Jackpot" and "Cool Millions" symbols were "wild," substituting for other symbols to create winning combinations. Accordingly, she reasons that the two symbols had been interchangeable since machine 5455's installation - even during the fifty-one days when the awards schedule mistakenly omitted all references to the "Double Jackpot" symbol. Therefore, Barton concludes, "an objective observer" of the machine would reasonably conclude that alignment of three Double Jackpot ducks would yield the same result as hitting three "Cool Millions" ducks.

The respondents maintain that the terms of the contract are clearly evidenced by the awards schedule, which provided no award for an alignment of "Double Jackpot" ducks.

Having considered these arguments and examined the record, we conclude that the intent of the parties is unambiguously evidenced by the machine's awards schedule. The awards schedule clearly depicted the alignment of symbols that would implicate the primary jackpot: three "Cool Millions" ducks. In addition, the schedule clearly shows that "Cool Millions" ducks symbols- not "Double Jackpot" duck symbols - were "wild" and effectively substituted for any other symbol. Indeed, there was no depiction of "Double Jackpot" ducks on the awards display at the time in question here. Under this "wild" configuration, the primary jackpot was only implicated if the three "Cool Millions" duck symbols were aligned.

Barton argues that the gaming contract in this matter must be interpreted in light of the objective

manifestation of the respondents' offer.<sup>7</sup> Certainly, the "cardinal rule[] of [the] construction" of contracts is to ascertain the parties' intent with reference to the language of the instrument itself.<sup>8</sup>

However, the terms of the gaming contract in this case unambiguously demonstrate that the respondents did not intend to award Barton the primary jackpot for an alignment of three "Double Jackpot" symbols. Thus, we conclude that the hearing examiner properly concluded, as a matter of law, that Barton was not entitled to the primary jackpot award.<sup>9</sup>

---

<sup>7</sup>Barton's reliance on Alper v. Sahara Hotel & Casino, No. 96-1228-L (Nev. State Gaming Control Board, Oct. 9, 1997), is misplaced. Even if that administrative decision controlled here (Barton does not indicate why it would), we conclude that Alper simply restates the fundamental rule that the intent of the parties to an agreement is to be reasonably discerned from the terms of the contract itself. Cf. 17A Am. Jur. 2d Contracts 343 (1998); see also, James Hardie Gypsum, Inc. v. Inquipco, 112 Nev. 1397, 1402, 929 P.2d 903, 906 (1996).

<sup>8</sup>See Barringer v. Gunderson, 81 Nev. 288, 302-03, 402 P.2d 470, 477 (1965); see also Margrave v. Dermody Properties, 110 Nev. 824, 827, 878 P.2d 291, 293 (1994) (citing Agric. Aviation v. Clark Co. Bd. Comm'rs, 106 Nev. 396, 398, 794 P.2d 710, 712 (1990)).

<sup>9</sup>We note here that the respondents have never suggested that Barton is not entitled to the \$4,427.00 secondary jackpot, although, under the express terms of the gaming contract, she did not perform the obligation necessary to collect the secondary jackpot (namely, she did not align three 7s). Indeed, Barton herself argues that no evidence supports the award of \$4,427.00. In response, the respondents suggest that, under classical contract principles, Barton may collect the secondary jackpot on three equitable theories: (1) because there was no manifestation of mutual assent and, therefore, no contract formation; (2) because of Barton's unilateral mistake; or (3) because the respondents misrepresented a material term of the contract. See Marcangelo, 847 F. Supp. at 1230-31 (discussing these equitable doctrines in context of slot machine dispute).

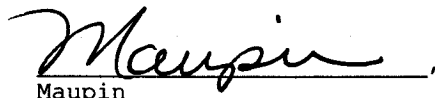
Because the respondents do not contest the hearing examiner's conclusion that Barton is entitled to the secondary jackpot award solely because she was "wronged," we need not resolve this question here.


In light of our determination that the terms of the gaming contract in this case are unambiguous, we need not consider Barton's additional policy-based arguments.<sup>10</sup>

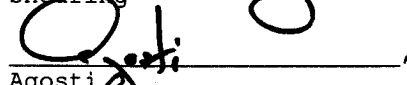
CONCLUSION


We conclude that the gaming contract at issue in this case unambiguously provided that Barton's three "Double Jackpot" symbol alignment did not entitle her to the primary progressive jackpot award.

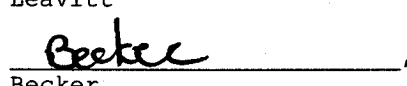
Accordingly, we ORDER the judgment of the district court AFFIRMED.<sup>11</sup>

  
Maupin, C.J.

  
Shearing, J.

  
Agosti, J.

  
Leavitt, J.

  
Becker, J.

cc: Hon. Michael A. Cherry, District Judge  
Mark D. Lerner  
Jones Vargas  
Schreck Morris  
Clark County Clerk

<sup>10</sup>Barton also contends that that the Board's decision was based upon unlawful procedure because the hearing examiner permitted the respondents to elicit irrelevant testimony. We have considered this assignment of error and find it without merit.

<sup>11</sup>The Honorable C. Clifton Young, Justice, and the Honorable Robert E. Rose, Justice, did not participate in the decision of this appeal.