

IN THE COURT OF COMMON PLEAS
WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION

JANINE LITMAN and TIMOTHY MAS-
TROIANNI, individually and jointly,

Plaintiffs,

v.

CANNERY CASINO RESORTS, LLC, a Ne-
vada limited liability company,
WASHINGTON TROTTHING ASSOCIATION,
INC., a Delaware corporation, WTA
ACQUISITION CORP., a Delaware cor-
poration, CANNERY CASINO RESORTS,
LLC, CANNERY CASINO RESORTS and
WASHINGTON TROTTHING ASSOCIATION,
INC. t/d/b/a THE MEADOWS RACETRACK
& CASINO, an unincorporated asso-
ciation, CANNERY CASINO RESORTS, an
unincorporated association consist-
ing of one or more yet unidentified
natural and/or legal per-sons, in-
dividually and jointly,

CASE NO: 2012-8149

**PLAINTIFFS' SUPPLEMENTAL BRIEF IN
OPPOSITION TO DEFENDANTS' MOTION
FOR RECONSIDERATION**

On behalf of Plaintiffs

Counsel of Record for this Party:

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WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION**

JANINE LITMAN and TIMOTHY MAS-
TROIANNI, individually and jointly,

CASE NO: 2012-8149

Plaintiffs,

v.

CANNERY CASINO RESORTS, LLC, a Nevada limited liability company, WASHINGTON TROTting ASSOCIATION, INC., a Delaware corporation, WTA ACQUISITION CORP., a Delaware corporation, CANNERY CASINO RESORTS, LLC, CANNERY CASINO RESORTS and WASHINGTON TROTting ASSOCIATION, INC. t/d/b/a THE MEADOWS RACETRACK & CASINO, an unincorporated association, CANNERY CASINO RESORTS, an unincorporated association consisting of one or more yet unidentified natural and/or legal persons, individually and jointly,

**PLAINTIFFS' SUPPLEMENT BRIEF IN OPPOSITION
TO DEFENDANTS' MOTION FOR RECONSIDERATION**

Plaintiffs hereby incorporate, by this reference, Plaintiffs' Brief in Opposition to Defendants' Motion to Dismiss for Lack of Subject-Matter Jurisdiction, as well as Plaintiffs' Brief in Opposition of Defendants' Motion for Reconsideration.¹ In all prudence and caution, Plaintiffs supplement hereby.

No matter how wishfully or creatively Defendants try to argue regulations that may create generalized procedures, the Gaming Control Board simply is not empowered to hear disputes as contemplated by this action. See, 4 Pa.C.S.A. § 1202. Compare the Consent Agreement, stating that the Board is empowered under 4 Pa. C.S. §1202(b)(19) "to levy fines or other sanctions..."²

¹ Defendants served Plaintiffs with their Motion for Reconsideration on Monday, November 4, 2013, after hours by electronic mail, for an argument presentation on November 7, 2013. On the morning of the argument, Defendants then handed another document, a Memorandum in Support. The conduct is instructive.

² On October 7, 2013, the undersigned expressly recalls Judge O'Dell Seneca asking Defendants' counsel (of which there were two attorneys attending for Defendant, one arguing and one researching) to cite the statutory power to adjudicate disputes in the nature of this action, which Defendants' counsel was unable to do, and have not done to date after more than a full, fair and significant opportunity to do so.

This referenced power is not the adjudication and civil remediation arising from a panoply of unrelated common law and statutory rights.

Moreover, for the legislative branch to exclude the judicial branch of its inherent power to resolve civil disputes, the standard has been clearly stated by the Pennsylvania Supreme Court:

[S]tatute says in unambiguous language that, if the legislature provides a specific, exclusive, constitutionally adequate method for the disposition of a particular kind of dispute, no action may be brought in any 'side' of the Common Pleas to adjudicate the dispute by any kind of 'common law' form of action other than the exclusive statutory method.

West Homestead Borough School District v. Allegheny County Board of School Directors, 440 Pa. 113, 269 A.2d 904 (1970), 440 Pa. at 118, 269 A.2d at 907 (emphasis added). Defendants continue utterly to fail to cite the language.

Interesting, for the procedures that Defendants have recently placed forward, they have incremented their argument along the way, each time, trying a little harder to present some mechanism by implication.

- Defendants never mentioned any administrative processes in three sets of preliminary objections. The last set on June 21, 2013, which is well after the Consent Agreement of February 14, 2013.
- Defendants never mentioned the intervention process in their Motion to Dismiss, nor responded in that regard when questioned by this Court during oral arguments.
- Defendants never mentioned general petition practice in its Motion for Reconsideration on November 4, 2013, nor responded in that regard when questioned by this Court during oral arguments.

Clearly, Defendants' conduct demonstrates that there is not an "unambiguous" "specific," or "constitutionally adequate" method for the disposition of a particular kind of dispute, outside of the judicial process by an exclusive statutory method.

1. Defendants continue utterly to fail to cite the "unambiguous" "specific," and "constitutionally adequate" method for the disposition of a particular kind of dispute, outside of the judicial process by an exclusive statutory method.

2. Plaintiffs followed exactly the regulated procedure outlined by the Gaming Control Board to no known end or result, nor any definitive next step. The process implemented, consistent with the powers, regulations and realities of the case, was that the process was internal investigative only. Moreover, other than an initial complaint and interview, Plaintiffs did not have a full and fair opportunity to participate in the investigative procedure, and were excluded from participating with legal counsel, presentation of evidence or cross-examination. The assertion to "intervene" at the end of the investigation process, and only after the Consent Agreement was already entered into, is completely illogical and nonsensical.

3. Plaintiffs were not provided with any fair notice that it was their property interest that was or could be subsumed into the administrative civil "penalty" process. Plaintiffs are not referred to in the Consent Agreement or related Order, nor were Plaintiffs provided any directed constitutional contact. See, Exhibit 12.³

4. On February 14, 2013, a two-party Consent Agreement was executed, subject to Gaming Board's approval. See, Exhibit 12. This Court will take judicial notice that the documents regarding Docket 3071-2013, are part of an investigation file considered, in part, confidential under the Gaming Act, 4 Pa.C.S. §1206(f) and 65 P.S. §67.708(b)(17) relating to a noncriminal investigation. In light of that secret record, on February 28, 2013, a docket entry was opened for the approval of the Consent Agreement, scheduled for March 13, 2013. That agenda item stated:

You are invited to attend and will have the opportunity to provide oral argument regarding the above referenced matter. No new evidence or testimony will be accepted. Please come forward when your name or matter is announced.

See, Exhibit 12 (emphasis added).

5. Plaintiffs are not parties to, nor even mentioned, in the Consent Order or the Consent Agreement.

6. The Gaming Control Board simply is not empowered to hear disputes as contemplated by this action. See, 4 Pa.C.S.A. § 1202. Compare the Consent Agreement, stating that the Board is empowered under 4 Pa. C.S.

³ References are to the exhibits to Plaintiffs' Third Amended Complaint, duly filed of record.

§1202(b)(19) "to levy fines or other sanctions..." This power is not the adjudication and civil remediation arising from a panoply of unrelated common law and statutory rights. See, fn. 2, *supra*.

7. Subject-matter jurisdiction is a separate issue from administrative procedural issues, and rights of action arising under the statute.

8. This action was filed on December 12, 2013, months prior to the date of the Consent Agreement, with no "next step" procedures following filing the Complaint. Contrary to Defendants' position, and consistent with Plaintiffs' position, the Gaming Control Board handles internal regulatory issues, not the civil adjudication and remediation of a panoply of civil disputes and rights, and Defendants continue to fail to cite any law to the contrary as required by law.

9. There are multiple defendants, and multiple counts which include unfair trade practices, treble damages and a panoply of other claims. Plaintiffs are entitled to a jury trial, and there is absolutely no evidence that the legislature intended for the Gaming Control Board to be the sole and exclusive mandatory method.

WHEREFORE, Plaintiffs hereby request that Defendants' motion for reconsideration be denied.

November 12, 2013

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all Defendants on this date, by depositing the same in the United States Mail, First Class, Postage Pre-Paid, and hand delivery, upon the following:

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November 12, 2013

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