

Date: 20170718
Docket: SC 16-01-29832
(Winnipeg Centre)
Indexed as: Bachewich v.
Western Lottery Corporation
Cited as: 2017 MBQB 136

COURT OF QUEEN'S BENCH OF MANITOBA

B E T W E E N:

CHRISTOPHER BACHEWICH,) Counsel:
)
) claimant,) Christopher Bachewich
) on his own behalf
- and -)
)
WESTERN CANADA LOTTERY CORPORATION,) Patrick J. Rykes
) for the defendant
defendant.)
) JUDGMENT DELIVERED:
) July 18, 2017

McCawley J.

[1] The claimant claims \$10,000 in damages plus interest and costs arising from what he alleges are unfair lottery practices committed by the defendant, Western Canada Lottery Corporation ("WCLC").

[2] Mr. Bachewich indicated that he regularly purchases lottery tickets to participate in the WCLC's Sport Select Pools Game. He advised that he is a multi-ticket purchaser who regularly buys tickets in order to participate in between 64 and 108 games every weekend at a cost of \$5,000 to \$10,000.

[3] The evidence discloses that each game, including the Sport Select game, is governed by its own conditions which are contained on the back of the ticket,

as well as on the WCLC's website. They may also be obtained in hard copy on request.

[4] As well, a free Playbook is available at the various kiosks where the tickets are sold outlining the applicable rules and conditions. Mr. Bachewich allowed that he is very familiar with all of them and this was apparent from his testimony.

[5] It is also well established in law that, when a player/purchaser chooses to participate in a game such as Sports Select, the relationship between that person and the WCLC is contractual. In participating in the game the purchaser agrees to be bound by the terms and conditions prescribed by the WCLC.

[6] Mr. Bachewich told the court he was dissatisfied with two of the rules applicable to Sports Select.

1. A player can only purchase three tickets at a kiosk or sales venue per day. Since Mr. Bachewich normally purchases his tickets on a Friday, this rule requires him to go to different kiosk locations throughout the City of Winnipeg in order to be able to purchase the number of tickets he wants; and
2. When a game is cancelled no refunds are given for tickets purchased.

[7] In support of his claim, Mr. Bachewich told the court about two occasions which best illustrated his concerns. The first was a hockey weekend in the Sports Select Pool involving a cancelled Buffalo Sabres versus Winnipeg Jets

game. The court learned that, in the process of picking teams, a player can "box" certain games which are then automatically counted as a win for the player. Similarly, when a game is cancelled, the player gets the advantage and it too is counted as a win. Mr. Bachewich's grievance is that if he had known of the cancelled game in advance he would have boxed differently, although he had acknowledged that there was no guarantee that even if he had done so he would have won. However, he argued his odds would have been better had that information been available to him. In his mind the appropriate remedy would be for the WCLC to give him a refund for the ticket.

[8] Mr. Bachewich took his concerns to the WCLC hoping to persuade them he should get a refund but he was unsuccessful. He said he was so "mad" that he threw the tickets in the fire and consequently did not have any evidence to support this part of his claim.

[9] As it happened, the WCLC was able to recreate the tickets he had purchased and was able to demonstrate that, in fact, Mr. Bachewich had made two incorrect team picks. The result is that, even if he had had a chance to "box" differently, he would not have been a winner.

[10] The second Sports Select Pool was a football weekend. Mr. Bachewich bought 32 tickets and, according to the records of the WCLC, there were 19,000 winners that day. On that weekend, a football game was cancelled due to snow. Mr. Bachewich agreed this was something beyond anyone's control and would be considered an act of God, although he backed off this view later in his testimony.

Mr. Bachewich also acknowledged that sometimes cancellations are not announced until right before the start of the game, that sometimes games are delayed and then cancelled, and in order to play the pool's game the player has to pick the teams prior to playtime so that there must be a cut-off time determined in advance. Although Mr. Bachewich acknowledged that overall the WCLC handles cancellations "quite well," he still thought the rules were unfair even though all boxed games and all cancelled games automatically count as a win for the player.

[11] Mr. Bachewich acknowledged he was familiar with the rules on the back of the ticket and that the rules and regulations exempted the WCLC from any liability resulting from an act of God.

[12] A representative of the WCLC testified that counting a result where a game has been postponed or cancelled as a correct pick or win for the player was the fairest way in which such circumstances could be dealt, particularly since in the Pools game players compete against each other and the other games, which were not cancelled, were played.

[13] He also explained why it would be impractical to attempt to go back to the thousands of lottery ticket purchasers to give refunds as a result of a postponed or cancelled game, a position with which I agree.

[14] In light of the foregoing, it is clear that Mr. Bachewich did not suffer any damages with respect to the Sports Select hockey pool since he would not have won on the basis of the picks he made.

[15] With respect to the football pool, which he candidly acknowledged he brought as a test case because he “wanted to send a message,” he agreed he was familiar with the rules and regulations, all of which were followed by the WCLC. Accordingly I find there was no breach of contract on which to base his claim.

[16] The claimant’s claim will be dismissed with costs awarded to the WCLC in the amount of \$150.

McCawley J.