

STATE OF MICHIGAN
COURT OF APPEALS

JOHN MCENTEE and SCOTT OUELLETTE,

Plaintiffs-Appellants,

v

INCREDIBLE TECHNOLOGIES, INC.,

Defendant-Appellee.

UNPUBLISHED

March 16, 2006

No. 263818

Wayne Circuit Court

LC No. 03-336168-CP

Before: Davis, P.J., and Cavanagh and Talbot, JJ.

PER CURIAM.

In this action to recover monies allegedly lost to defendant through gambling, plaintiffs appeal as of right from the trial court's order dismissing plaintiffs' claims on the basis that plaintiffs lacked standing to bring this action under either MCL 750.315 or the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.* We affirm.

Defendant Incredible Technologies, Inc. (IT) develops, manufactures, markets, and sells electronic Golden Tee® arcade games, which are based on the sport of golf. The games feature a "Hole-n-Win" contest, in which a player who pays to participate in the contest receives a specific sum of money for achieving a hole-in-one on a designated hole. Plaintiffs initiated this action to recover monies allegedly lost while playing Hole-n-Win, an activity that plaintiffs allege constitutes illegal gambling.

Plaintiffs contend that they have standing to bring this action under MCL 750.315. We disagree.

A standing defense may be raised by a trial court *sua sponte*, as it was in this case. *46th Circuit Trial Court v Crawford Co*, 266 Mich App 150, 177-178; 702 NW2d 588 (2005). Whether a party has standing is a question of law this Court reviews de novo. *Rohde v Ann Arbor Public Schools*, 265 Mich App 702, 705; 698 NW2d 402 (2005). Where a party's claim is governed by statute, the party must have standing as bestowed by statute. *46th Circuit Trial Court, supra* at 177, citing *In re Foster*, 226 Mich App 348, 358; 573 NW2d 324 (1997).

In addition, the interpretation and application of a statute is a question of law this Court reviews de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003). "The primary goal of statutory interpretation is to give effect to the intent of the Legislature." *Title Office, Inc v Van Buren Co Treasurer*, 469 Mich 516, 519; 676 NW2d

207 (2004), quoting *In re MCI*, 460 Mich 396, 411; 596 NW2d 164 (1999). In construing a statute, the court must consider the object of the statute, the harm it is designed to remedy, and apply a reasonable construction that best accomplishes the statute's purpose. *Morris & Doherty, PC v Lockwood*, 259 Mich App 38, 44; 672 NW2d 884 (2003) (citations omitted).

The language in MCL 750.315 expressly provides a civil remedy for a plaintiff who loses money to a defendant through playing or betting on cards, dice, or by any other device in the nature of such playing or betting. See *Raymond v Green*, 194 Mich 639; 161 NW 857 (1917); *Lassen v Karrer*, 117 Mich 512; 76 NW 73 (1898). However, where a plaintiff's cause of action arises out the playing of a game, machine, or equipment for money, we hold that the plaintiff's cause of action under MCL 750.315 is preempted by the Michigan Gaming Control and Revenue Act (MGCRA), MCL 432.201 *et seq.*

Under the MGCRA, the Legislature vested the Michigan gaming control board (MGCB) with exclusive jurisdiction over all matters relating in any way to the licensing, regulating, monitoring, and control of the non-Indian casino industry. *Papas v Gaming Control Bd*, 257 Mich App 647, 658-659; 669 NW2d 326 (2003). Under the MGCRA, the MGCB has expansive and exclusive authority to regulate all aspects of casino gambling in Michigan, including the duty to review casino license applications, promulgate rules and regulations to implement and enforce the act, provide for the levy and collection of penalties and fines for violation of the act or administrative rules, receive complaints from the public, and conduct investigations into the conduct of gambling operations to assure compliance with the act and to protect the integrity of casino gaming. MCL 432.204(17). And, under MCL 432.204a(1)(e), the MGCB has the power to “[a]dopt standards for the licensing of all person under this act, as well as for electronic or mechanical gambling games or gambling games, and to establish fees for the licenses.”

Further, the MGCRA applies to “all persons who are licensed *or otherwise participate in gaming under this act*,” MCL 432.203(4) (emphasis added). Under the MGCRA, “casino” is broadly defined as “a building in which gaming is conducted.” MCL 432.202(g). “Gaming” means “to deal, operate, carry on, conduct, maintain, or expose or offer for play any gambling game or gambling operation.” MCL 432.202(x). Further,

“Gambling game” means any game played with cards, dice, equipment or a machine, including any mechanical, electromechanical or electronic device . . . for money, credit, or for any representative of value . . . but does not include games played with cards in private homes or residences in which no person makes money for operating the game, except as a player. [MCL 432.202(v).]

And, “gambling operation” means the conduct of authorized gambling games in a casino. MCL 432.202(w).

To the extent the Golden Tee games are played for money, the Golden Tee games are considered “gambling games” under the plain language of MCL 432.202(v). Consequently, the Golden Tee games, as well as the suppliers of the games, are governed by the MGCRA. MCL 432.207a. And, any building in which the Golden Tee games are operated, maintained, or exposed or offered for play is considered a casino and is subject to the regulations promulgated by the MGCB under the MGCRA. MCL 432.202(g); MCL 432.202(x).

Any law that is inconsistent with the MGCRA does not apply to casino gaming. MCL 432.203(3). Thus, this Court has held that the MGCRA preempts inconsistent laws, including common law. *Kraft v Detroit Entertainment, LLC*, 261 Mich App 534, 551-552; 683 NW2d 200 (2004). Therefore, we hold that plaintiffs' cause of action under MCL 750.315 is preempted by the MGCRA.

Plaintiffs also contend that they have standing to bring this action under the MCPA. We disagree. The MCPA expressly exempts from its reach “[a] transaction or conduct specifically authorized under laws administered by a regulatory board . . . acting under statutory authority of this state” MCL 445.904(1)(a); *Kraft, supra* at 540. And, to the extent the Golden Tee games are played for money, the games and suppliers of the games are subject to the exclusive regulatory authority of the MGCB. Therefore, we hold that defendant is exempt from plaintiffs' MCPA claims.

We affirm.

/s/ Alton T. Davis
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot