

Joaquim Moreira, Moshe Braunstein and Remo Gigliotti (plaintiffs/defendant by counterclaim/appellants) v. Ontario Lottery and Gaming Corporation, Falls Management Company, Falls Management Group, L.P., and John Doe #1, John Doe #2, John Doe #3, and the Alcohol and Gaming Commission of Ontario (defendants/plaintiff by counterclaim/respondents) (C55521)

Tebaldo Barbuscio (plaintiff/defendant by counterclaim/appellant) v. Ontario Lottery and Gaming Corporation, Falls Management Company, Falls Management Group, L.P., and John Doe #1, John Doe #2, John Doe #3, and the Alcohol and Gaming Commission of Ontario (defendants/plaintiff by counterclaim/respondents) (C55527; 2013 ONCA 121)

**Indexed As: Moreira et al. v. Ontario Lottery and Gaming Corp. et al.**

Ontario Court of Appeal  
Simmons, Armstrong and Watt, JJ.A.  
February 26, 2013.

**Summary:**

The plaintiffs were four high stakes gamblers who lost approximately \$2.1 million while playing roulette at the Niagara Fallsview Casino Resort over a three and a half year period. The plaintiffs claimed that a "floating ball rule" used by the casino operators, which had not been approved by the Alcohol and Gaming Commission of Ontario (AGCO), rendered the games illegal. The plaintiffs, in separate actions sued the casino operators and the Ontario Lottery and Gaming Corp. (OLGC), alleging unjust enrichment, and the AGCO, alleging negligence. The OLGC commenced actions against two of the plaintiffs for recovery of gambling loans (the collection actions). The actions were ordered to be heard together and the collection actions were deemed to be counterclaims. The AGCO and the casino operators moved for summary judgment to have the actions dismissed. The OLGC also sought summary judgment in the two collection actions.

The Ontario Superior Court (motions judge), in a decision reported [2012] O.T.C. Uned. 2304, concluded that, even if the roulette games were illegal, the plaintiffs would not be entitled to a remedy in this case. The motions judge therefore dismissed the plaintiffs' actions. He also granted summary judgment to the OLGC in the collection actions. The plaintiffs appealed.

The Ontario Court of Appeal dismissed the appeals. The court held that the casino operators were not required to obtain AGCO approval of their floating ball practice and their failure to do so did not make the games of roulette the plaintiffs played illegal. The court opined that even if it had found the games to be illegal, the plaintiffs claims for unjust enrichment and negligence could not succeed.

**Gaming and Betting - Topic 1505**

Casinos - Regulation - Rules of the games (incl. approval of) - Roulette dealers at a casino had a practice of reaching into the roulette wheel while it was spinning to remove what was commonly referred to as a "floating ball" before the ball dropped into a pocket -

At issue was whether the roulette games were illegal because the "floating ball" rule had not been approved the Alcohol and Gaming Commission of Ontario (AGCO) - The Ontario Court of Appeal held that the games were not illegal - The court was not persuaded that the casino operators' floating ball practice was a "rule of the game" within the meaning of the Gaming Act Regulations that required the AGCO's approval - The court opined that even if the games were illegal, the plaintiffs would not be entitled to a remedy against either the casino operators (unjust enrichment) or the AGCO (negligence) - See paragraphs 44 to 113.

### **Words and Phrases**

**Rules of the game** - The Ontario Court of Appeal interpreted this phrase as it appeared in s. 30(1) of the Games of Chance Conducted and Managed by the Ontario Lottery and Gaming Corp., Reg. 385/99 - See paragraphs 65 to 76.

### **Cases Noticed:**

Garland v. Consumers' Gas Co., [2004] 1 S.C.R. 629; 319 N.R. 38; 186 O.A.C. 128; 2004 SCC 25, rehd to. [para. 35].  
Bell ExpressVu Limited Partnership v. Rex et al., [2002] 2 S.C.R. 559; 287 N.R. 248; 166 B.C.A.C. 1; 271 W.A.C. 1; 2002 SCC 42, rehd to. [para. 69].  
Cooper v. Registrar of Mortgage Brokers (B.C.) et al. (2001), 277 N.R. 113; 160 B.C.A.C. 268; 261 W.A.C. 268; 2001 SCC 79, rehd to. [para. 112].  
Edwards et al. v. Law Society of Upper Canada et al. (2001), 277 N.R. 145; 153 O.A.C. 388; 2001 SCC 80, rehd to. [para. 112].  
Attis et al. v. Canada (Minister of Health) et al. (2008), 254 O.A.C. 91; 300 D.L.R.(4th) 415; 2008 ONCA 660, rehd to. [para. 112].  
Williams v. Canada (Attorney General) et al. (2009), 249 O.A.C. 150; 95 O.R.(3d) 401; 2009 ONCA 374, rehd to. [para. 112].  
Wellington et al. v. Ontario et al. (2011), 277 O.A.C. 318; 105 O.R.(3d) 81; 2011 ONCA 274, rehd to. [para. 112].

### **Statutes Noticed:**

Gaming Control Act Regulations (Ont.), Games of Chance Conducted and Managed by the Ontario Lottery and Gaming Corp., Reg. 385/99, sect. 30(1) [para. 65]; sect. 30(4) [para. 62].  
Games of Chance Conducted and Managed by the Ontario Lottery and Gaming Corp. - see Gaming Control Act Regulations (Ont.).

### **Counsel:**

Edward L. Greenspan, Q.C., for the appellants, Joaquim Moreira and Remo Gigliotti;  
W. Xavier Navarrete and Glen Perinot, for the appellants, Moshe Braunstein and Tebaldo Barbuscio;  
Derek D. Ricci and Nicholas Van Exan, for the respondents, Ontario Lottery and Gaming Corporation, Falls Management Company and Falls Management Group, L.P.;  
John S. Kelly and Tom Schreiter, for the respondent, Alcohol and Gaming Commission of Ontario.

This appeal was heard on November 1, 2012, before Simmons, Armstrong and Watt, J.J.A., of the Ontario Court of Appeal. The following decision was released, for the court, by Simmons, J.A., on February 26, 2013.

Appeal dismissed.

Editor: Elizabeth M.A. Turgeon