

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF GEORGETOWN  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2012CP2200002

Sheriffs Office Georgetown  
 County

20 Murrells Inlet  
 Sweepstakes Hest  
 Sweepstakes  
 Management Sy

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court

ORDER INFORMATION

This order  ends  does not end the case.

Motion to Reconsider or to Alter or Amend Judgment/J Libet -- Denied

Additional Information for the Clerk: \_\_\_\_\_

FILED  
 GEORGETOWN COUNTY  
 2013 JUN 28 PM 3:38  
 ALMA Y. WHITE  
 CLERK OF COURT

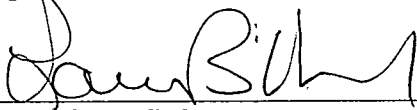
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**



Circuit Court Judge

2152

Judge Code

6/27/2013

Date

S.C. Attorney General's Office  
Civil Section

JUL 05 2013

Received by DAG  
Reviewed by/Date \_\_\_\_\_  
Referred to/Date \_\_\_\_\_  
Notes: \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on <sup>28<sup>th</sup></sup>~~27<sup>th</sup>~~ day of ~~June~~ <sup>July</sup> 2013, and a copy mailed first class or placed in the appropriate attorney's box on ~~27<sup>th</sup>~~ day of ~~June~~ <sup>July</sup> 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Jared Quante Libet PO Box 11549 Columbia, SC 29211

Gerald E. Harmon Jr. 1109 Church St Georgetown, SC 29440

Jonathan S. Gasser 1529 Laurel St Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter: Kay H. Richardson

*Lucinda LeSane, Deputy*  
Alma Y. White - Clerk of Court

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

Georgetown County Sheriff's Office, )  
Appellant, )

v. )

20 Murrells Inlet Sweepstakes HEST )  
Sweepstakes Management System )  
machines, )

Respondent. )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO.: 2012-CP-22-00002

**ORDER**

FILED  
GEORGETOWN COUNTY, S.C.  
2012 DEC 18 PM 1:53  
ALMA Y. WHITE  
CLERK OF COURT

This matter came before me on Thursday, November 15, 2012 on Appellant's appeal of an Order issued by the Honorable Isaac L. Pyatt, Georgetown County Magistrate on December 6, 2011. In his Order, Magistrate Pyatt found that the Respondent's HEST Sweepstakes Management System did not involve gambling because there was no consideration required to participate in the sweepstakes and that the Respondent's HEST Sweepstakes Management System's terminals are not operated by slots, nor do they contain any type of "lock-out" feature. Magistrate Pyatt also found that the twenty HEST games before him did not violate S.C. Code Ann. § 12-21-2710.

The post seizure hearing/trial of this matter was heard by Magistrate Pyatt on December 6, 2011. The twenty HEST Sweepstakes Management System machines at issue were seized by Appellant from a business operating as Murrells Inlet Sweepstakes in Georgetown County on September 26, 2011. The post seizure hearing/trial lasted several hours during which Magistrate Pyatt examined photographs of the machines and received the testimony of lay and expert witnesses. Magistrate Pyatt also heard extensive arguments of counsel. Magistrate Pyatt

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ultimately found the machines to be legal games. His specific findings include the following:

1. The Respondent operates a business that operates in Georgetown County. A primary component of the Respondent's business is the promotion of sweepstakes contests through the use of HEST Technologies' HEST Sweepstakes Management System machines. The sweepstakes are often used in conjunction with donations to nonprofit entities, such as the Skyward Bound Ranch, or the sales of products by retail establishments.

2. Consideration is never required to participate in any sweepstakes contests operated by the Respondent.

3. A participant can enter one of the Respondent's sweepstakes contest in any of four ways: (1) he may purchase goods or services that have been designated to qualify for the sweepstakes; (2) he may make a donation to a designated charitable organization; (3) he may request an entry on site of an establishment that is hosting one of the Respondent's sweepstakes contests, or (4) he may request an entry via email. The latter two of these options do not require any purchase, donation, or other tender of consideration. The method by which a participant enters the sweepstakes does not impact his odds of winning a prize.

4. The Respondent's sweepstakes are operated through a series of terminals maintained on site at a location with which the Respondent has contracted to host a sweepstakes contest. The Respondent HEST Sweepstakes Management System incorporates two types of terminals: a "point-of-sale" terminal, and a "player" terminal. Under this system, there are two methods of revealing a participant's sweepstakes entry. A participant may choose to reveal the results of his entry at a player terminal using a game theme of his choice to display his entry's

content. The game themes are used as an entertaining method to reveal the prize values of a sweepstakes participant, but the type of game theme chosen does not impact the participant's odds of winning. In other words, the results of game play at the player terminal simply display the prize assigned to the sweepstakes entry when the pool was created. Alternatively, a participant may choose to reveal the prize amount corresponding to his entry at a point-of-sale terminal without utilizing a game theme. The method of revealing the prize value of an entry in no way diminishes any goods or services that have been purchased or donations to charitable organizations, nor does it have any bearing on that participant's chance of winning.

5. Neither the point-of-sale terminals nor the player terminals are operated by a slot or by placing anything of value into them.

6. The odds of winning any sweepstakes prize remain the same regardless of how the participant obtained his entry into the sweepstakes and regardless of how the participant chooses to reveal the results of his entry because sweepstakes entries are drawn from the same pool of one million entries at the point of sale. The Respondent's system contains a finite set of entries, which is stored in the system's database. All entries into the sweepstakes are predetermined and created prior to the beginning of the sweepstakes.

7. Testimony was provided by Nick Farley at Nick Farley & Associates. Mr. Farley has previously performed work for various agencies in South Carolina, including the State Law Enforcement Division and the State Attorney General, and served as an expert witness on these issues for the defendant government agencies in *Castle King, LLC v. Hoisington*, Case No. 2002-CP-10-3182. The Court finds Mr. Farley's testimony persuasive and consistent with the evidence presented. Mr. Farley testified that he has examined and studied the software source

code associated with the Respondent's HEST Sweepstakes Management System program. He testified that the finite pool of entries is not accessible to the operator or patron and cannot be altered. He testified that the system contains a file check signature of CRC32, and that the publication of this check signature is a critical tool for law enforcement in determining whether a lawful promotion has been altered. Mr. Farley testified that the Respondent's HEST Sweepstakes Management System performs in a familiar fashion as other permitted sweepstakes that are commercially offered to the public.

8. The system's player terminals are not designed to be used as gaming terminals or slot machines as: (a) there are no means to accept or dispense currency or tokens; (b) the software is not designed to determine a gaming outcome at the player terminal and (c) the program does not contain a random-number generator that determines the outcome of a video gaming machine.

Magistrate Pyatt cited South Carolina Code § 12-21-2710 which prohibits certain gambling devices:

"It is unlawful for any person to keep on his premises or operate or permit to be kept on his premises or operated within this State any vending or slot machine, or any video game machine with a free play feature operated by a slot in which is deposited a coin or thing of value, or other device operated by a slot in which is deposited a coin or thing of value for the play of poker, blackjack, keno, lotto, bingo, or craps, or any machine or device licensed pursuant to Section 12-21-2720 and used for gambling or any punch board, pull board, or other device pertaining to games of chance of whatever name or kind, including those machines, boards, or other devices that display different pictures, words, or symbols, at different plays or different numbers, whether in words or figures or, which deposit tokens or coins at regular intervals or in varying numbers to the player or in the machine, but the provisions of this section do not extend to coin-operated nonpayout pin tables, in-line pin games, or to automatic weighing, measuring, musical, and vending machines which are

constructed as to give a certain uniform and fair return in value for each coin deposited and in which there is no element of chance.”

Magistrate Pyatt concluded that in order for the machines to be prohibited under this section, the three elements of gambling must be present: (1) chance; (2) price, and (3) prize. *Ward v. West Oil Co.*, 387 S.C. 268, 278, 692 S.E.2d 516, 522 (2010). Based on the above-stated Findings of Fact, Magistrate Pyatt found that the Respondent’s sweepstakes system and machines do not violate Section 12-21-2710 of the South Carolina Code.

Appellant also contended that the machines are illegal because they are machines operated by a slot. Magistrate Pyatt rejected this contention and noted that the machines, specifically the terminals, are not operated by a slot. Magistrate Pyatt also found that the machines are not “*used for gambling*” and thus, do not violate S.C. Code Ann. § 12-21-2710.

In its appeal, Appellant restates its trial arguments. Having heard the arguments of counsel, reviewed Magistrate Pyatt’s Order and the memorandum of the parties, the Court affirms Magistrate Pyatt’s findings and specifically affirms Magistrate Pyatt’s finding that the twenty machines before him are lawful games which comply with South Carolina law including S.C. Code Ann. § 12-21-2710.

This Court has also relied upon the case of *Darlington Theaters, Inc. v. Coker*, 190 S.C. 282, 2 S.E.2d 782 (1939). In South Carolina, an essential component to any illegal gambling device is that the player must be required to post some consideration in exchange for the opportunity to play a game of chance. This is a fundamental distinguishing point between the Respondent’s system, which does not require consideration in return for an entry into the sweepstakes, and gaming that is illegal under South Carolina law. The Respondent’s HEST Sweepstakes Management System does not require a participant to make a purchase, donate to a

charity, or offer any consideration at all in order to enter the sweepstakes. Standing alone, this fact pushes the sweepstakes beyond the scope of South Carolina's gaming laws under the *Darlington Theaters* analysis.

Additionally, to the extent a participant enters the sweepstakes in conjunction with a commercial or charitable transaction, the consideration paid by the participant would be for either (1) the purchase of the good or service or (2) a donation to a charitable organization, not for an entry into the sweepstakes. This stands in stark contrast to the factual background of the illegal game in *Sun Light Prepaid Phonecard Co. v. State*, 360 S.C. 49, 600 S.E.2d 61 (2004). The majority in *Sun Light Prepaid Phonecard* concluded that the phone cards were illusory goods and that, instead, the consideration paid was actually for the pull-tab game.

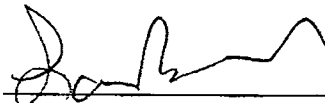
The concerns expressed by the *Sun Light Prepaid Phonecard* majority are not present under the Respondent's HEST Sweepstakes Management System, as it is not tied to the sale of a certain item. As the testimony and evidence demonstrated, a participant may enter the sweepstakes (1) after purchasing any of the goods regularly sold by a store hosting the sweepstakes (e.g., bread, milk, or soft drinks); (2) after making a donation to a charity; or (3) after requesting an entry without making a purchase or donation.

An additional fact that this Court finds compelling is that the Respondent HEST Sweepstakes Management System incorporates two types of terminals: a "point-of-sale" terminal, and a "player" terminal. Under this system, there are two methods of revealing a participant's sweepstakes entry. A participant may choose to reveal the results of his entry at a player terminal using a game theme of his choice to display his entry's content. The game themes are used as an entertaining method to reveal the prize values of a sweepstakes participant,

but the type of game theme chosen does not impact the participant's odds of winning. In other words, the results of game play at the player terminal simply display the prize assigned to the sweepstakes entry when the pool was created. Alternatively, a participant may choose to reveal the prize amount corresponding to his entry at a point-of-sale terminal without utilizing a game theme. The method of revealing the prize value of an entry in no way diminishes any goods or services that have been purchased or donations to charitable organizations, nor does it have any bearing on that participant's chance of winning. In other words, whether or not a participant has won a sweepstakes prize is always determined at the "point of sale" location prior to the participant ever sitting down at the "player" terminal. The playing of the actual games has nothing to do with determining whether you have won a sweepstakes prize, but rather is simply one means of revealing the results of a participant's entry in the sweepstakes.

In light of the above, Magistrate Pyatt's Order is hereby affirmed.

IT IS SO ORDERED, this 10 day of DECEMBER, 2012.



Honorable Larry B. Hyman, Jr.  
Fifteenth Judicial Circuit

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