

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
Bentley D. Price, Circuit Court Judge

Appellate Case No. 2023-000783

1 Dragon's Ascent Video Gaming Machine;
SC Games of Skill, LLC..... Respondents,

v.

South Carolina Law Enforcement Division.....Appellant.

**SOUTH CAROLINA LOTTERY COMMISSION'S
AMICUS BRIEF SUPPORTING APPELLANT SLED**

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INTRODUCTION

As scholars have recognized, “video machine gambling is the most destructive gambling activity ever devised. It insinuates portable technology into every corner of a state, and the technology will be used for illegal gambling, no matter what the law or regulations say.” R. Randall Bridwell & Frank L. Quinn, *From Mad Joy to Misfortune: The Merger of Law and Politics in the World of Gambling*, 72 MISS. L.J. 565, 729 (2002); *see also Proctor v. Whitlark & Whitlark, Inc.*, 414 S.C. 318, 336, 778 S.E.2d 888, 897 (2015) (Toal, C.J., concurring in part and dissenting in part) (stating this article offers “a definitive history of video gambling in South Carolina”).

In South Carolina, video machine gambling “mushroomed from a rather clandestine and inauspicious beginning in 1986 into a multi-billion dollar business by its demise in July 2000.” *Mims Amusement Co. v. S.C. Law Enf’t Div.*, 366 S.C. 141, 146, 621 S.E.2d 344, 346 (2005). Though all three branches of state government agree video gambling is dead in South Carolina, Respondents seek to summon its ghost—this time with a flashy, but equally addictive, dragon-shooting game.

But Dragon’s Ascent is no game of Pac-Man. *Cf. Note, Video Poker and the Lottery Clause: Where Common Law and Common Sense Collide*, 49 S.C. L. REV. 549, 562 (1998) (“The lack of prize is one of the key distinctions between video gambling devices such as video poker and entertainment video games such as ‘Pac-Man.’ In essence, the winning of free games on ‘Pac-Man’ is of de minimis value to the player and therefore cannot properly be characterized as a prize.”). The goal of the game is to “[s]hoot dragons to win credits,” which “are redeemable for cash.” (R. p. 411). And the more value a player wagers on each shot, the more money the player stands to win. (R. p. 218). If a player, for example, inserts \$1 into the machine and shoots the “Rainbow Dragon,” he or she could win \$1,783. (R. pp. 178, 218).

That is the textbook definition of an unlawful video gambling machine.¹ Under section 12-21-2712, the Dragon’s Ascent machine was thus subject to forfeiture and destruction after a magistrate found it was “prohibited by [s]ection 12-21-2710.” S.C. Code Ann. § 12-21-2712. Of course, “forfeiture” is an important tool, for it “serves a deterrent purpose both by preventing the further illicit use of the property and by imposing an economic penalty, thereby rendering the illegal behavior unprofitable.” *Westside Quik Shop, Inc. v. Stewart*, 341 S.C. 297, 304, 534 S.E.2d 270, 273 (2000).

Yet the owner of Dragon’s Ascent remains undeterred. Its playbook is hardly novel though. As our supreme court recognized nearly a century ago, “[i]n no field of reprehensible endeavor has the ingenuity of man been more exerted than in the invention of devices to comply with the letter but to do violence to the spirit and thwart the beneficent objects and purposes of the laws designed to suppress the vice of gambling.” *Harvie v. Heise*, 150 S.C. 277, 286, 148 S.E. 66, 69 (1929) (quoting *Moberly v. Deskin*, 155 S.W. 842, 844 (Mo. Ct. App. 1913)).

Because the South Carolina Law Enforcement Division (SLED) properly seized the Dragon’s Ascent machine, and the magistrate correctly ordered its forfeiture and destruction, the South Carolina Lottery Commission (the Lottery) submits this amicus brief in support of SLED.

¹ See S.C. Code Ann. § 12-21-2710 (“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.”).

INTEREST OF *AMICUS CURIAE*

In 2001, the General Assembly passed the South Carolina Education Lottery Act (the Act) that created the Lottery. *See* 2001 S.C. Act No. 59, §§ 1–13 (codified as amended at S.C. Code Ann. §§ 59-150-10 through -410).

Along with requiring that “net proceeds of lottery games . . . be used to support improvements and enhancements for educational purposes and programs,” the General Assembly found that “lottery games must be operated and managed in a manner which ensures that the lottery is operated with integrity and dignity and free of political influence, maximizes the use of revenues, and provides continuing entertainment to the public.” *Id.* at § 1; *see also* S.C. CONST. art. XVII, § 7 (“Only the State may conduct lotteries, and these lotteries must be conducted in the manner that the General Assembly provides by law. The revenue derived from the lotteries must be used first to pay all operating expenses and prizes for the lotteries. The remaining lottery revenues must be credited to a separate fund in the state treasury styled the ‘Education Lottery Account,’ and the earnings on this account must be credited to it. Education Lottery Account proceeds may be used only for educational purposes as the General Assembly provides by law.”).

To fulfill its mission, the Lottery works closely with SLED to obtain thorough background checks, ensure the security and integrity of its games, and investigate violations of the Act. *E.g.*, S.C. Code Ann. §§ 59-150-40(B), -60(14), -130(A), -165, -240(C)(5), & -280.

The Lottery is governed by a board of commissioners that, among other things, has a duty to “promulgate regulations relating to the categories of lottery games and the conduct of lottery games.” S.C. Code Ann. § 59-150-50(4). It also has the power to “select and contract with lottery vendors and lottery retailers.” S.C. Code Ann. § 59-150-60(13); *see also* S.C. Code Ann. Regs. 44-30 (“The Executive Director shall enter into a contract for each approved lottery retail sales

location. The contract shall set out the duties, responsibilities, and obligations pertaining to the parties to the contract.”). In doing so, the Lottery has developed an Individual Retailer Contract that a retailer must sign when applying for a new or renewed retail license. *See Individual Retailer Application*, S.C. EDUC. LOTTERY (last visited Aug. 22, 2024), https://www.sceducationlottery.com/documents/retailers/applications/Application_IndividualRetailer_NewCOO.pdf.

Providing guidance to retailers wishing to sign the agreement, the Lottery flags three important issues: (1) the effect of a change in ownership, (2) the prohibition on illegal gaming devices, and (3) the contours of validating prizes. *Id.* As relevant here, the Lottery offers the following caution about gaming devices:

In 2014, more than thirty retail outlets were suspended after SCEL became aware of illegal gaming device(s) in the licensed location(s). It is the SCEL Retailer’s responsibility to ensure the legality of any amusement devices in their retail outlet. By signing the Retailer Contract, the Retailer agrees to an automatic, non-appealable six-month suspension if a magistrate determines an illegal device was present in your retail outlet.

Id. The agreement explains that “an illegal device at a location licensed by SCEL is inconsistent with the reputation, integrity, and public confidence SCEL must maintain.” *Id.* Notably, the paragraph on gaming devices specifically references the forfeiture procedures under sections 12-21-2710 and -2712. *See id.*

While the Lottery is not directly involved in the forfeiture process that the General Assembly created to combat illegal gaming machines, *see* S.C. Code Ann. § 12-21-2712, the resulting determinations in those judicial proceedings directly affect the Lottery’s individual retailer agreements with the offending establishments. What is more, the Lottery’s regulations expressly disallow “any lottery or lottery games prohibited by [s]ections 59-150-20(7), 12-21-2710, 16-19-40[,] and 16-19-50.” S.C. Code Ann. Regs. 44-140.

Heeding this proscription, the Lottery's board of commissioners weighed in on the legality of the Dragon's Ascent gaming machine:

While the General Assembly determines which types of lottery games may be lawfully offered for purchase in South Carolina, the Board of Commissioners of the South Carolina Lottery Commission has a responsibility to state its position pertaining to Dragon's Ascent. The Board is steadfastly committed to promoting fair and responsible play and does not support or endorse offering *any* game that requires an exemption to, or the suspension of, the express prohibitions codified in the South Carolina Code of Laws Sections 12-21-2710, 16-19-40, 16-19-50 (making video poker and other games of chance and skill illegal). This non-traditional game is inconsistent with responsible play by motivating repetitive play that often leads to excessive or compulsive spending, jeopardizing the integrity of lottery operations, games, and potentially lottery proceeds for education (which have grown from \$400.3 million in FY2017 to \$492.8 million in FY20). In adopting the Lottery Act in 2001, the General Assembly made the wise policy decision to not allow the Lottery to offer this form of addictive gaming and this prohibition should remain.

Meeting Minutes, S.C. EDUC. LOTTERY BD. OF COMM'RS (Dec. 9, 2020), https://www.sceducationlottery.com/documents/lottery/MeetingMinutes/Full_Board_Minutes_2020-12-09.pdf. Thus, the Lottery has an interest in the outcome of this appeal.

DESIRABILITY OF AN AMICUS BRIEF

The Lottery submits this brief to explain that the General Assembly—together with the Supreme Court of South Carolina—have set forth the proper lens through which the Court must determine whether Dragon's Ascent is an unlawful gaming machine subject to forfeiture and destruction under section 12-21-2712. In the Lottery's view, it is. As the Lottery recognized over three years ago, “[s]oon after the end of video poker, the General Assembly chose not to allow SCEL to offer addictive immediate gratification games. Dragon's Ascent is inconsistent with SCEL's culture and statutory mandate for encouraging socially responsible play as a traditional lottery.” *Id.* This brief directly addresses and counters Respondents' arguments to show why

playing the unscrupulous Dragon’s Ascent gaming machine by wagering money to win more money is a textbook example of video gambling that contravenes South Carolina law.

As the body charged with regulating retailers whom the owners of Dragon’s Ascent are pursuing, the Lottery has a unique perspective to offer in this case. In sum, the Lottery believes it can provide a useful voice as the Court considers whether the circuit court erred in reversing the magistrate’s determination that Dragon’s Ascent is an illegal gambling machine subject to forfeiture under section 12-21-2710.

ARGUMENT

The Lottery agrees with and adopts SLED’s arguments.² It writes only to offer additional perspective on how the circuit court erred in interpreting section 12-21-2710 and misapplied precedent in concluding Dragon’s Ascent was a lawful machine.

To start, “the interpretation of a statute is a question of law for the Court to review de novo,” *S.C. Pub. Interest Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 495, 854 S.E.2d 836, 837 (2021), “with no particular deference to the lower court,” *N.Y. Times Co. v. Spartanburg Cnty. Sch. Dist. No. 7*, 374 S.C. 307, 310, 649 S.E.2d 28, 29 (2007). “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the [General Assembly].” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “If a statute’s language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.” *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994).

² The Lottery further adopts SLED’s Statement of the Issues on Appeal, Statement of the Case, Statement of the Facts, and Standard of Review sections in its opening brief. *See* Rules 208(b)(6) & 213, SCACR.

Still, a court must “not construe the statute in a way which leads to an absurd result or renders it meaningless.” *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) (per curiam). “Courts will reject a statutory interpretation [that] would lead to a result so plainly absurd that it could not have been intended by the [General Assembly] or would defeat the plain legislative intention.” *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010). “If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect.” *Hodges*, 341 S.C. at 91, 533 S.E.2d at 584 (quoting *Ray Bell Constr. Co., Inc. v. Sch. Dist. of Greenville Cnty.*, 331 S.C. 19, 26, 501 S.E.2d 725, 729 (1998)).

“[A] familiar canon of construction [is] that a thing which is in the intention of the makers of a statute is as much within the statute as if it were within the letter.” *Greenville Baseball v. Bearden*, 200 S.C. 363, 368–69, 20 S.E.2d 813, 816 (1942). “It is also an old and well-established rule that words ought to be subservient to the intent, and not the intent to the words.” *Id.*

At issue here is section 12-21-2710—titled “[t]ypes of machines and devices prohibited by law; penalties”—which provides the following:

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.

S.C. Code Ann. § 12-21-2710 (emphasis added).³ Under the statute, “[a]ny person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for a period of not more than one year, or both.” *Id.*

Section 16-19-40, for its part, provides as follows:

If any person shall play at any tavern, inn, store for the retailing of spirituous liquors or in any house used as a place of gaming, barn, kitchen, stable or other outhouse, street, highway, open wood, race field or open place at (a) any game with cards or dice, (b) any gaming table, commonly called A, B, C, or E, O, or any gaming table known or distinguished by any other letters or by any figures, (c) any roley-poley table, (d) rouge et noir, (e) any faro bank (f) any other table or bank of the same or the like kind under any denomination whatsoever or (g) *any machine or device licensed pursuant to Section 12-21-2720 and used for gambling purposes*, except the games of billiards, bowls, backgammon, chess, draughts, or whist when there is no betting on any such game of billiards, bowls, backgammon, chess, draughts, or whist or shall bet on the sides or hands of such as do game, upon being convicted thereof, before any magistrate, shall be imprisoned for a period of not over thirty days or fined not over one hundred dollars, and every person so keeping such tavern, inn, retail store, public place, or house used as a place for gaming or such other house shall, upon being convicted thereof, upon indictment, be imprisoned for a period not exceeding twelve months and forfeit a sum not exceeding two thousand dollars, for each and every offense.

S.C. Code Ann. § 16-19-40 (emphasis added). The statute is aptly titled “[u]nlawful games and betting.” *Id.*

Although both statutes use the same language, reference section 12-21-2720, relate to unlawful gambling machines, and were amended by Act 125 of 1999, Respondents urge the Court to analyze section 12-21-2710 in a silo, without any regard to what section 16-19-40—or precedent

³ Licensure under section 12-21-2720 was no longer effective July 1, 2000. *See* 1999 S.C. Act No. 125, Part VI, § 23(C)–(D).

interpreting the statute—may have to say on the subject. Respondents also invite the Court to ignore the title of Act 125. The canons of statutory construction, however, do not countenance either cabined approach.

“In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose.” *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). The Court “must read the statute so ‘that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.’” *Senate ex rel. Leatherman v. McMaster*, 425 S.C. 315, 322, 821 S.E.2d 908, 912 (2018) (quoting *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)). Further, “statutes [that] are part of the same Act must be read together.” *Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). Indeed, “statutes dealing with the same subject matter are *in para materia* and must be construed together, if possible, to produce a single, harmonious result.” *Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000).

“It is [also] ‘proper to consider the title or caption of an act in aid of construction to show the intent of the [General Assembly].’” *Hock Rh, LLC v. S.C. Dep’t of Revenue*, 423 S.C. 208, 214, 813 S.E.2d 540, 543 (Ct. App. 2018) (first alteration in original) (quoting *Rhame v. Charleston Cnty. Sch. Dist.*, 412 S.C. 273, 276-77, 772 S.E.2d 159, 161 (2015)); *see also Lindsay v. S. Farm Bureau Cas. Ins. Co.*, 258 S.C. 272, 277, 188 S.E.2d 374, 376 (1972) (same) (quoting *Univ. of S.C. v. Elliott*, 248 S.C. 218, 221, 149 S.E.2d 433, 434 (1966)).⁴

⁴ Our appellate courts did not find the statutes ambiguous in any of these cases. Nor is that a prerequisite to looking to the title of the Act. *See Creswick v. Univ. of S.C.*, 434 S.C. 77, 82, 862 S.E.2d 706, 708 (2021) (“Only where *the language of an act* gives rise to doubt or uncertainty as to legislative intent may this Court search for that intent *beyond the borders of the act* itself.” (emphasis added)). After all, the Court is merely looking at *all words* the General Assembly used to accomplish its goal. And the title is certainly within “the borders of the act.” *Id.*

Brushing aside the canons of construction, Respondents choose to spotlight the back-and-forth between a fractured supreme court on a subject that is only marginally related to the issue here. In *Town of Mount Pleasant v. Chimento*, our supreme court rejected a constitutional challenge to section 16-19-40. 401 S.C. 522, 737 S.E.2d 830 (2012). Chief Justice Toal concurred in result only, explaining that “[a]lthough there are other sound provisions outlawing video poker,” she was “loathe to strike the critical language from the general ban on gaming in the event that it guts these provisions, and consequently, South Carolina’s longstanding prohibition against gambling.” *Id.* at 537–38, 737 S.E.2d at 840 (Toal, C.J., concurring) (citing S.C. Code Ann. §§ 12-21-2710 & -2712 (2000)). Justice Hearn was unconvinced, arguing that 12-21-2710 was “entirely independent and separate from” section 16-19-40, and striking down one “in whole or in part would have no impact on” the other. *Id.* at 552, 737 S.E.2d at 848 (Hearn, J., dissenting).

Respondents devote significant airtime to Justice Hearn’s dissent, avoiding the relevant holdings in the majority. This approach is misguided. For one, with respect, Justice Hearn’s opinion about the nexus between sections 12-21-2710 and 16-19-40 is not the law, as she did not gain a majority for that proposition. For another, Respondents take her statement out of context. Justice Hearn simply said striking down one statute would not impact the constitutionality of the other. After all, they are different criminal statutes: one penalizes the player, S.C. Code Ann. § 16-19-40, while the other penalizes the establishment, S.C. Code Ann. § 12-21-2710. Further, the divided court considered the constitutionality of only one phrase within section 16-19-40—“house used as a place of gaming”—which does not appear in section 12-21-2710. But their independent constitutionality has nothing to do with whether the statutes—both of which use the same language to define the contours of unlawful gambling considered here—must be read together to decide legislative intent. *See Rivas*, 342 S.C. at 109, 536 S.E.2d at 375.

In all events, the parties did not make this argument in *Chimento*, and a majority of the Court did not rule on whether the statutes can be harmonized—especially where they use the same language—to inform the Court’s analysis of whether a machine is lawful. And our “appellate courts . . . do not speak unless spoken to and do not answer questions they are not asked.” *Watson v. Underwood*, 407 S.C. 443, 452 n.9, 756 S.E.2d 155, 160 n.9 (Ct. App. 2014) (quoting *State v. Austin*, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991)). Whatever value Justice Hearn’s dissent in *Chimento* on the constitutionality of section 16-19-40 adds to the conversation about the interpretation of section 12-21-2710, the question is now before the Court. Under longstanding rules of statutory interpretation, the Court must read sections 12-21-2710 and 16-19-40 together.

Sections 12-21-2710 and 16-19-40 both use the language “any machine or device licensed pursuant to Section 12-21-2720 and used for gambling” in prohibiting certain conduct: playing or owning/operating. While one penalizes the player, S.C. Code Ann. § 16-19-40, and the other penalizes the establishment, S.C. Code Ann. § 12-21-2170, *Chimento*’s interpretation of the former necessarily informs the Court’s interpretation of the latter.

Indeed, Justice Pleicones considered the meaning of the word “gambling” as used in section 32-1-10 of the South Carolina Code to inform his interpretation of “gambling” as used in section 16-19-40. *Chimento*, 401 S.C. at 532, 737 S.E.2d at 837. After considering what it meant in section 32-1-10, he stated that “[g]ambling as defined in South Carolina includes betting money on the outcome of any ‘game’ whatsoever, regardless of the amount of skill involved in the game.” *Id.* at 532–33, 737 S.E.2d at 837. “In other words, gambling/gaming depends not on the skill/chance ratio, but on the wager.”⁵ *Id.* at 533, 737 S.E.2d at 837. This became the majority

⁵ In so holding, the court found “[r]eliance on the ‘American Rule’ [or dominant factor doctrine] and lottery cases [in interpreting the statute] is misplaced, . . . as § 16-19-40 criminalizes the playing of certain games and gambling, not a lottery.” 401 S.C. at 531, 737 S.E.2d at 836. So too

because then-Chief Justice Toal agreed that the appellants had engaged in conduct that “fell so clearly within the statutory proscription.” *Id.* at 536, 737 S.E.2d at 839 (Toal, C.J., concurring).

The magistrate properly recognized as much here following a lengthy hearing and thoughtful analysis. (R. pp. 127–333 & 3–15). After finding Dragon’s Ascent did not constitute a “device pertaining to games of chance of whatever name or kind,” S.C. Code Ann. § 12-21-2710, the magistrate then determined whether it was “any machine or device licensed pursuant to Section 12-21-2720 and used for gambling,” *id.*; *see also* (R. pp. 10–12). Recognizing *Chimento* provided guidance on the issue of gambling, the magistrate properly found Dragon’s Ascent is an unlawful gambling machine because it is undisputed that wagering is required to play the game and “a person ‘gambles’ when money is wagered in so playing.” (R. p. 14). The magistrate noted the Dragon’s Ascent “machine also has several characteristics of gambling devices, including but not limited to the free play feature, the meter which records the amount of points that are redeemed, and the fact that the machine does not give change.” (R. p. 14).

But the circuit court, which did not ask a single question during the “brief” appellate hearing, reversed and found the magistrate erred by purportedly adopting a new test. (R. pp. 340–64 & 16–30). In doing so, the circuit court did not cite or apparently consider the canons of statutory construction. (R. pp. 25–29). Rather, the circuit court—as Respondents do now—leaned on commentary from Justice Hearn’s dissenting opinion on a different issue, various unpublished opinions and lower court orders, and other general policy arguments. *Id.*; *but see* Rule 268(d)(2), SCACR (“Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved.”). Those nonbinding

here. *See* S.C. Code Ann. § 12-21-2710 (prohibiting the possession or operation of “any machine or device licensed pursuant to Section 12-21-2720 and used for gambling”).

authorities, however, cannot overcome *Chimento*'s holding that "gambling/gaming depends not on the skill/chance ratio, but on the wager." 401 S.C. at 533, 737 S.E.2d at 837.

Notably, the magistrate found the Dragon's Ascent machine was subject to destruction for an "additional" reason: "the playing of Dragon's Ascent by patrons of LG's By the Creek violates § 16-19-50 and must be destroyed pursuant to § 12-21-2712." (R. p. 14). Section 16-19-50 prohibits keeping or using "any machine or device licensed pursuant to Section 12-21-2720 and used for gambling purposes." And under section 12-21-2712, any unlawful machine "in violation of Section 12-21-2710 *or any other law of this State*" is subject to destruction. S.C. Code Ann. § 12-21-2712 (emphasis added). Yet the circuit court did not address this holding, which appears to be an independent ground for destroying the unlawful Dragon's Ascent gambling machine.

At any rate, because the identical language in sections 12-21-2710 and 16-19-40 must be read together, *see Rivas*, 342 S.C. at 109, 536 S.E.2d at 375, to effectuate the General Assembly's intent, *see Roberts*, 393 S.C. at 342, 713 S.E.2d at 283, the circuit court erred as a matter of law by disregarding section 16-19-40—as analyzed in *Chimento*—to find the Dragon's Ascent machine was lawful. *See Bowers v. Thomas*, 373 S.C. 240, 245, 644 S.E.2d 751, 753 (Ct. App. 2007) (stating this Court "retains de novo review of whether the facts show the circuit court's [decision] was controlled or affected by errors of law" (citing *Hadfield v. Gilchrist*, 343 S.C. 88, 92–93, 538 S.E.2d 268, 271 (Ct. App. 2000))); *see also S.C. Pub. Interest Found.*, 432 S.C. at 495, 854 S.E.2d at 837; *N.Y. Times Co.*, 374 S.C. at 310, 649 S.E.2d at 29.

CONCLUSION

The Court should reverse the circuit court's decision and remand with instructions to reinstate the magistrate's order of forfeiture and destruction.

Respectfully submitted,

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