

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2006-CP-40-1814  
Opinion 5131, filed May 15, 2013  
Appellate Case No. 2013-002470

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OCT 22 2015

**S.C. Supreme Court**

Lauren Proctor and Trans-Union National  
Title Insurance Company f/k/a Atlantic  
Title Insurance Company,..... Respondents,

v.

Whitlark & Whitlark, Inc. d/b/a Rockaways  
Athletic Club and Pizza Man, Forrest  
Whitlark, Paul Whitlark, Charlie E. Bishop,  
and Brett Blanks,.....Defendants,

Of Whom

Whitlark & Whitlark, Inc. d/b/a Rockaways  
Athletic Club, Forest Whitlark, and Paul Whitlark are .....Petitioners.

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**PETITIONERS' PETITION FOR REHEARING**

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Petitioners Whitlark & Whitlark, Inc. d/b/a Rockaways Athletic Club, Forest Whitlark, and Paul Whitlark submit this Petition for Rehearing pursuant to Rule 221, SCACR, as the Court overlooked or misapprehended certain points, as more fully set forth below.

This Court affirmed, in part, the trial court's grant of partial summary judgment on Petitioners' liability under the Unfair Trade Practices Act. In so doing, this Court stated:

the circuit court found that "the operation of video poker machine[s] in contravention of state law is an unfair act as defined in the [UTPA]." Petitioners have not appealed this ruling. Thus, it is now the law of the case. Consequently, based on the distinct facts of this case, we are constrained to find that Procter has a viable claim under UTPA.

Proctor v. Whitlark & Whitlark, Op. No. 27580 (Shearouse Adv. Sheet, October 7, 2015 at p. 59-60) (internal footnote and citation omitted). This Court then concluded that Proctor is only entitled to seek recovery for losses sustained prior to July 1, 2000 – the date of the ban on video poker.

However, the trial court's ruling that that "the operation of video poker machine[s] in contravention of state law is an unfair act as defined in the [UTPA]" was limited to the operation of video poker machines **after** the ban made video gaming illegal:

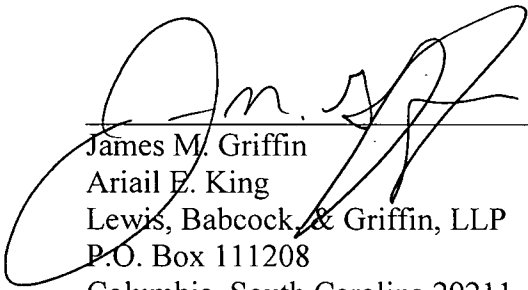
***The operation of video poker machines became unlawful in 2000.*** S.C. Code Ann. § 39-5-20 provides in part that "unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful." In order to be actionable, an unfair or deceptive act must have an impact upon the public interest. An act is "unfair" under the Act when it is offensive to public policy, or when it is immoral, unethical, or oppressive. ***Clearly the operation of a video poker machines in contravention of state law is an unfair act as defined by the Act. Thus partial summary judgment is granted as to Defendant Whitlark & Whitlark on the issue of liability only.***

R.p. 11 (emphasis added).

In other words, the trial court's order only found that the operation of the poker machines in violation of the ban on video poker machines that went into effect on July 1, 2000 was illegal and thus constituted a violation of UTPA. Petitioners did not appeal this finding. However, the circuit court did **not** address whether Petitioners' operation of video poker machines from 1999 until July 1, 2000 violated another State law. In fact, the circuit court specifically declined to address any other potential violations:

Further, Plaintiffs argue that the operation of video gaming machines violates the S.C. Unfair Trade Practices Act because it is a violation of the Racketeer Influenced Corrupt Organizations (RICO) as well as other federal statutes relating to illegal gambling, money laundering and racketeering activity...Plaintiff relies on Johnson v. Collins Entertainment Co., Inc., 349 S.C. 613, 564 S.E.2d 653 (2002) to show that Defendant violated these various federal statutes. Analysis of federal statutes is not necessary in determining whether there was a violation of the S.C. Unfair Trade Practices Act ("Act").

R.p. 10-11. This Court has therefore misapprehended the circuit court's finding that the operation of poker machines was illegal and a violation of UTPA. The circuit court has made no such ruling as to whether Petitioners' pre-1999 operation of video poker machines was in contravention of any other State law and therefore violated the UTPA. Therefore, Proctor is not entitled to summary judgment as to liability for conduct occurring prior to July 1, 2000.



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October 22, 2015

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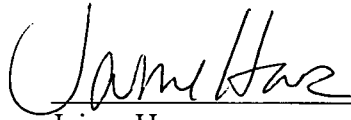
**CERTIFICATE OF SERVICE**

I, Jaime Harmon, the undersigned employee of Lewis, Babcock & Griffin L.L.P,  
attorney for the Petitioners, do hereby certify that I have served a copy of the foregoing  
**Petitioners' Petition for Rehearing**, in connection with the above-referenced case by  
mailing a copy of the same by United States Mail, postage prepaid, to the following  
addresses:

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A handwritten signature in cursive script, appearing to read "Jaime Harmon", written over a horizontal line.

Jaime Harmon

Columbia, South Carolina  
October 22, 2015