Current Status Of Collectibility Of Gaming-Related Credit Dollars

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Credit is an important part of incentives used to lure gamblers to gaming establishments. However, a collection problem exists in casinos retrieving gaming-related credit losses of individuals living in states where gambling is illegal. The author discusses the history of this question, citing recent cases related to Atlantic City.

Legalized casino gaming, which was approved by the citizens of New Jersey on November 8, 1976, has been used as a unique tool of urban redevelopment for Atlantic City. The introduction of casino rooms in major hotel convention complexes permitted an additional element in the hospitality industry of that city, facilitating the redevelopment of existing blighted areas through refurbishing and expanding existing hotels and convention, tourist, and entertainment facilities. Lost hospitality-oriented facilities have been replaced, and new investment capital has been attracted to New Jersey in general and to Atlantic City in particular.

The figures on the number of people visiting Atlantic City since gaming was introduced have been astonishing. In 1985, 30 million people poured onto the southern New Jersey island of Absecon, on which Atlantic City is located, making this the most visited tourist destination in the world.[1] Casino revenues rose by 10 percent to a record $1.95 billion in 1984. Last year's gross win, the amount the house keeps after paying winners but before expenses, exceeded the $1.7 billion of Las Vegas' 60 gaming houses. Since Resorts International opened its casino eight years ago, revenues from gambling have increased rapidly. Resorts' gross win in 1978 was $134 million. Since then, the combined gross win of the city's 11 casinos has been just shy of $7.5 billion.[2]

Although billions of dollars have been made in the past, each hotel must constantly establish new ways of making money. Expenses are astronomical in the casinos; competition is fierce, and each hotel must try to lure the gambler who is willing and able to establish a credit line.

Credit plays a most important part in every casino hotel. This type of gambler is given every incentive to come to a particular hotel. Airplanes, limousines, suites, free meals, and beverages all become a package for the person who can sign a marker. The credit department of a casino is similar to that of a bank. A banker who loans money knows that it must be paid back or his bank will fail. This is indeed true of a casino.

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Certainly, practices and procedures involved with the extension of credit by casinos are among the most sensitive aspects of casino operations. During the legislative deliberations on the Casino Control Act the State Commission of Investigation recommended to the legislature that casinos should not be allowed to extend credit at all, by reason of a concern for illicit diversion of revenues, which is popularly called "skimming" within the industry, by the manner of collection of credit debts, and by the question of player protection. The commission expressed the concern that if a player must either put up cash or write out a check, he is less likely to exceed his own personal financial limitations than if he can readily obtain easy credit. Casino credit is particularly attractive, because there is no interest and it has a liberal repayment period. Its attractiveness has a significant potential, therefore, to cause a bettor to lose more than he can afford.

A collection problem of prime importance is if a casino can get back gaming-related credit dollars advanced by the casino to a gambler who lives in a state where gambling is illegal. Two recent cases, *Resorts International Hotel, Inc. v. Joseph J. Agresta* 569 F. Supp. 24 (1983) and *Resorts International Hotel, Inc. v. Peter (Pierre) Zonis* 577 F. Supp. 876 (1984), illustrate that they may not collect these dollars owed to them. In both cases there was a valid contract executed, but as will be shown, neither was enforceable.

Gambling pursuits naturally result in monetary obligations. Society has frowned upon much of this gambling, and legislation preventing enforcement of various forms of gambling obligations has been enacted.

The determination of the legal status of gambling-related activities has been left to the states and there is great diversity among them concerning legalization of the various forms of gambling. There are at least 31 states which permit pari-mutuel wagering on horse racing, two which sanction casino gambling, and various treatments for state lotteries, dog racing, bingo, card playing, and off-track betting. To a considerable extent, these different state policies have resulted from referenda in which the people themselves have directly determined state policies.

Only two states, Nevada, which just amended its statutes in 1983, and New Jersey, cite within their state statutes that gambling contracts are enforceable. One other state, New York, enforces such debts, but it has anti-gambling statutes.

It seems that the primary consideration in a court's refusal to apply the laws of a foreign jurisdiction in these gambling cases is that jurisdiction's public policy. If a court feels such obligations are contrary to its public policy, it will choose not to enforce the contract.

The extension of credit by the casinos is one of the most sensitive aspects of casino operations. The final determination of whether the problem of collecting gaming-related credit dollars is significant enough to imply the elimination of the extension of credit falls on the shoulders of the gaming industry. As it stands now, a patron may enjoy the benefits of winning and disregard the consequences of losing.

Research Indicates Limited Support

The first approach taken at the outset of this research to determine

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if there was a collectibility problem with gaming-related credit dollars at New Jersey casinos was to interview casino managers, credit managers, and accounting department employees involved with collection.

All 11 casinos in Atlantic City were contacted. The responses were basically very similar. All were helpful and eager to participate but none were aware of any problems. It seems that if a credit application is approved and a patron has not yet gone over his credit limit, the managers of the above departments are not cognizant of any collection matters.

The legal department of the Casino Control Commission was contacted next. They too were helpful, but did not shed much light on the subject. Carol Welsh, a legal advisory within the department, stated that this is the responsibility of each casino, not of the Casino Control Commission. She added that the commission only would get involved if the casino did not follow the laws and procedures as set forth by the state. The commission is only interested in the fact that the casinos give out credit according to the law, but the final responsibility of collecting these debts is up to the individual casinos.

The general rule is that contracts and liabilities recognized as valid by the laws of the state or the country where made or established may be enforced in the courts of another state or country where the action is brought unless such contract or liability is contrary to the morals and public policy of that state. The Restatement, Conflict of Laws, 612 (a) (1934) states: "No actions can be maintained upon a cause of action created in another state the enforcement of which is contrary to the strong public policy of the forum."

There appear to be just three states which will enforce such contracts, Nevada, New Jersey, and New York. Of these, only Nevada and New Jersey state within their statutes that gambling contracts are enforceable. New York's Penal Law 991 reads in part: "All wagers, bets, or stakes, made to depend upon any gaming by lot or chance, or upon any contingent event whatever, shall be unlawful." Penal Law §992 reads: "All contracts for or on account of any money or property wagered, bet or staked shall be void."

When discussing the question of the public policy exception, it has been held that a law of a jurisdiction against wagering transactions prevents enforcement of a claim based upon a wagering transaction valid under applicable foreign law.

History Of Cases Is Varied

The court in *Winward v. Lincoln* (1902) 23 RI 476 recognized that if wagering contracts made and performed in Massachusetts, and valid there, were contrary to the public policy of Rhode Island, no recovery could be had upon these contracts in Rhode Island. They stated that although there was no Rhode Island statute condemning wagering contracts generally, yet since gambling and the making of any sorts of bets and wagers were misdemeanors in that state by statute, the spirit of these laws made it clear that in the opinion of the legislature public policy forbade the enforcement of all wagers by Rhode Island courts.

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The court in *Burrus v. Witcover* (1912) 158 NC 384 stated that North Carolina courts would not aid in the enforcement of a gaming contract on policy grounds, even if valid where made, and pointed to a statute declaring that no action shall be maintained in any court to enforce any such contract, whether the same was made in or out of the state.

In the case of *Lavick v. Nitzberg* (1948) 188 P2s 758 the plaintiff, who had a gambling establishment, sued on four checks of $500 each given to him in payment for chips to be used by the defendant in a game of draw poker, the payment on which checks had been stopped by the defendant. California courts denied recovery stating:

> that the consideration for notes given in a gambling game in a gambling house is against good morals and as such unlawful under the statute, and that it was sufficient to say that the uniform rule of the cases is that promissory notes given in a gambling house to the keeper of the house for the purpose of enabling the maker to participate in any game of chance with the keeper or his employees are unenforceable under the provisions of the statute.

The cases of *Young v. Sands, Inc.*[3] and *Dorado Beach Hotel Corp. v. Jernigan*[4] exemplify the Florida position on the question of whether the enforcement of foreign gambling debts validly incurred would be against the public policy of the state.

Young v. Sands, Inc. involved a Nevada gambling debt sought to be enforced in the Florida courts. The District Court of Appeal, Third District, felt that a Florida statute which declared such gambling debts void was a reflection of the public policy of the state and any enforcement of such debts would be in violation of this policy. Section 849.26 of the Florida statute provides:

> All promises, agreements, notes, bills, bounds or other contracts, mortgages or other securities, when the whole or part of the consideration if for money or other valuable thing won or lost, laid, staked, betted, or wagered in any gambling transaction whatsoever, regardless of its name or nature, whether heretofore prohibited or not, or for the repayment of money lent or advanced at the time of a gambling transaction for the purpose of being laid, betted, staked or wagered, are void and of no effect; provided, that this act shall not apply to wagering on pari-mutuels or any gambling transactions expressly authorized by law.

In the second case, *Dorado Beach Hotel Corp. v. Jernigan,* the District Court of Appeal, First District, did not rely upon Florida Statutes, section 849.26, but rather attempted to articulate the public policy of Florida regarding gambling contracts. The court felt that the public policy of the state permits "a restricted type of gambling which is incidental to spectator sports."[5] The plaintiff wanted Florida to enforce a valid gambling obligation incurred in Puerto Rico. The court held that the public policy of Florida would not allow such enforcement and that it was Florida's policy that the only forms of gambling made legal are "contests staged for those seeking pleasure in the State - primarily

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tourists."[6] Accordingly, the court concluded that Florida would not extend its judicial arm to aid in the collection of this type of gambling debt whether the transaction giving rise to the loss arose in Nevada, Puerto Rico, or Monte Carlo.

Just as Florida has many different types of gambling activities, the State of Connecticut also has legalized certain forms of gambling. Connecticut's state policy, though, also condemns gambling on credit and prohibits enforcement of a gambling contract.

The court in *King International Corporation v. Marvin Voloshin* (1976) 366 A.2d 1172 granted summary judgment for the defendant and held that the defendant's obligation, under the law of the Netherlands Antilles, to pay the owner such an amount was not enforceable in the state. The plaintiff, the owner and operator of a government-licensed gambling casino in Aruba, Netherlands Antilles, sought to recover $15,000 which was advanced to the defendant in the form of gambling chips which were used by the defendant. The plaintiff stated that the advance of the $15,000 resulted in a legal and enforceable obligation incurred by the defendant under the laws of the Netherlands Antilles. The defendant executed a check to the order of the plaintiff in the amount of $15,000, and, subsequently, stopped payment on that check.

The plaintiff claimed that since Connecticut now sanctions certain gambling activities, it would be unreasonable for the state not to accord legal recognition to an out-of-state gambling obligation incurred in a licensed gambling casino.

The court stated that ordinarily Aruban law would be enforceable since it is policy to keep the state courts open for enforcement of a proper foreign law unless a well-established public policy forbids it. It went on to cite the different gambling activities which were legal within Connecticut including a state lottery, off-track betting parlors, pari-mutuel betting at licensed racing events, greyhound tracks, and jai alai. In spite of the aforementioned activities, the court stated that Connecticut had never deviated from its ancient prohibition of gambling on credit. It went on to say that the prohibition of gambling on credit has been a part of anti-gambling statutes in this state for about 200 years and that the legislature may sanction certain forms of gambling and still refuse the collection of gambling debts.

Again, in 1983, the courts of Connecticut supported the above verdict. In the case *Casanova Club v. Bisharat* 189 Conn. 591, a British corporation which operated a legal gambling casino in London could not recover from the defendant the amount to cover nine dishonored checks. The court again cited the state policy condemning gambling on credit and prohibiting enforcement of any such obligation.

New York's penal laws have anti-gambling provisions. The modern New York position has taken a different view than earlier decisions handed down. In *Intercontinental Hotels Corp. v. Golden* (1964) 203 NE2d 210, the court reversed a judgment which dismissed the complaint in an action by the owner and operator of a Puerto Rican gambling casino to recover upon a check and IOU's given in payment of gambling debts validly entered into in Puerto Rico and enforceable under Puerto Rican

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law. The court held that public policy did not forbid the enforcement of these obligations and stated that there was nothing immoral in the gambling contract before it, noting that injustice would result if citizens of New York were allowed to retain the benefits of gambling winnings in a state where such gambling is legal, but to renege if they were losers.

The court went on to address the changing attitudes of the people of New York. In this connection, the court observed that the legalization of pari-mutuel betting and the operation of bingo games indicate that the New York public does not consider authorized gambling a violation of good morals. Thus the court held that informed public sentiment in New York is only against unlicensed gambling, which is unsupervised, unregulated by law, and affords no protection to customers and no assurance of fairness or honesty in the operation of gambling devices.

In New Jersey, long before the legalization of casino gambling, the courts rejected earlier cases and the anti-gambling statutes and made such contracts valid. In the case of *Caribe Hilton Hotel v. Toland* (1973) 63 NJ 301, the court held that it could no longer be said that gambling is so offensive to the public policy of New Jersey as to justify its courts in continuing to deny relief in such a situation. The court pointed to New Jersey statutes prohibiting gambling in general and making unauthorized gambling a misdemeanor, and said that these statutes carried the same sense and much the same wording that appeared in statutes nearly 200 years earlier.

However, the court compared to these statutes a number of subsequent others which were more liberalizing, such as New Jersey statutes permitting pari-mutuel betting at race tracks, licensed bingo and raffles, and a state lottery. The court stated that wagering in various different ways had become statutorily authorized in New Jersey which demonstrates that the public policy of this state could no longer condemn gambling as to deny relief to a suitor claiming the fruits of a gambling debt which had arisen in a jurisdiction which legally sanctioned the wagering transaction.

Recent Cases Deal With Atlantic City

The most recent verdicts handed down pertaining to gambling contracts deal specifically with gambling debts incurred in Atlantic City from out-of-state residents. New Jersey has recognized such contracts as valid since 1973. However, neither of the states involved recognizes the law of New Jersey and finds such gambling contracts unenforceable since both violate the express public policy of the states.

In *Resorts International Hotel, Inc. v. Joseph J. Agresta* (1983) 569 F. Supp. 24, the plaintiff claimed that during May and June, 1982, the defendant (Virginia resident) came to the plaintiff's place of business in Atlantic City, and engaged in and lost a substantial sum of money in games of chance. To pay the loss the defendant drew a series of three markers payable to the plaintiff. The markers were dishonored by the bank and returned to the plaintiff. The defendant then executed a note in payment of the loss providing that the defendant would pay the plaintiff $10,000 plus 8 percent interest. The plaintiff alleged that the note, interest, and collection charges were due and owing from the defendant.

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The court stated that the general rule is that contracts and liabilities recognized as valid by the laws of the state or the country where made or established may be enforced in the courts of another state or country where the action is brought unless such contract or liability is contrary to morals, public policy, or the positive law of the latter. The court further stated that in New Jersey, gambling has been legalized and a contract such as that in the present case would be enforceable in its courts. Thus under ordinary principles of law, the debt would be enforceable in the courts of the Commonwealth of Virginia. The fact, though, that the debt is a gambling debt removes it from the ordinary and requires the court to determine whether it is collectible in this court.

Next the court looked at the applicable Virginia statute, Va. Code 11-14 (1982), which provides that:

> All wagers, conveyances, assurances, and all contracts and securities whereof the whole or any part of the consideration be money or other valuable thing, won, laid, or bet, at any game, horse race, sport or pastime, and all such contracts to repay any money knowingly lent at the time and place of such game, race, sport, or pastime, to any person for the purpose of so gaming, betting, or wagering, or to repay any money so lent to any person who shall, at such time and place, so pay, bet, or wager, shall be utterly void.

The District Court also noted a recent Supreme Court of Virginia decision which found that a gambling contract was not merely voidable but utterly void and, therefore, unenforceable.[7] The Virginia Supreme Court in its decision held that the plain and unambiguous language of the statute should be construed strictly.

In light of the Supreme Court's decision and the plain language of Virginia's statute, the District Court stated that there could be no other conclusion than that the enforcement of such a contract would be against the express public policy of the state and that to enforce such a contract would offend two centuries of state policy.

The final case, *Resorts International, Inc. v. Peter (Pierre) Zonis* (1918) 577 F. Supp. 876, resulted in the same decision as the one cited above. Here the defendant Zonis (Illinois resident) executed four markers in Atlantic City while on a junket trip sponsored by Resorts' International Casino. He arranged a $15,000 line of credit with Resorts before he left Chicago and increased his credit limit to $25,000 after he arrived in Atlantic City. Zonis lost almost immediately the cash he had brought with him at the dice tables. He then signed two markers and obtained $15,000 worth of chips to continue gambling. He also lost these chips. The next day, he signed two additional markers and obtained another $10,000 which he lost at the dice tables as well; he returned to Chicago the next day. When Resorts presented the four checks for collection at Zonis' bank, the bank refused to honor the checks because his signatures did not match the signature in the bank's file. Zonis did not pay the $25,000 despite the demands of Resorts' collection agents.

Here, too, the District Court of Illinois focused on the point that gambling contracts are contrary to Illinois public policy and that to apply Il-

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linois law, they could not enforce Resorts' claims. They stated that the public policy of a state may be found in its judicial decisions, legislation, and prevailing customs. The court then noted many decisions handed down where the courts refused to enforce a gambling contract entered into in another state where the transaction was lawful, stating that they would violate public policy.

Additionally, the court examined the relevant Illinois statute 28-7 (a) (1981) which reads:

> All promises, notes, bills, bonds, convenants, contracts, agreements, judgments, mortgages, or other securities or conveyances made, given, granted, drawn, or entered into, or executed by any person whatsoever, where the whole or any part of consideration thereof shall be for any money or thing of value, won or obtained in violation of any section of this article are null and void.

The court rendered that it need not find that Illinois public policy has changed simply because certain types of gambling such as lotteries are now legal in Illinois. It concluded by stating that the legalization of gambling in a limited and regulated manner, while constituting a change to some degree in the state's deep-rooted public policy prohibiting gambling, has had no effect on the long-established policy of the state condemning gambling on credit and the enforcement of any such claim.

References

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[2]Christopher S. Eklund, "Atlantic City Is No Longer On A Hot Streak," *Business Week*, (March 18, 1985), p. 124.

[3]122 So.2d 618 (Fla. 3d Dist. 1960).

[4]202 So.2d 830 (Fla. 1st Dist. 1967).

[5]202 So.2d 830 (Fla. 1st Dist. 1967).

[6]*Ibid.*, at 831.

[7]*Kennedy v. Annandale Boys Club, Inc.*, 221 Va. 504, 272 S.E. 2d 38 (1980).

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