



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

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The Western Cape Gambling Board & Another v Sunwest International & Another (case no 1330/2021) [2023] ZASCA 118 (04 September 2023)

Today the Supreme Court of Appeal (SCA) upheld an appeal by the Western Cape Gambling Board against a judgment of the Western Cape High Court regarding the assessment of gambling tax payable by casino licence holders. The Board, together with Sun International Subsidiaries Grand west and Golden Valley casinos approached the Western Cape High Court for resolution of a dispute between them as to whether freeplay should be excluded from the assessment of taxable revenue on which the casinos had to pay gambling tax.

Freeplay refers to special non-cashable credits loaded by the respondents as casino operators onto card accounts that a group of gamblers known as the 'most valued customers' use when playing at their casino slot machines. These customers do not pay for freeplay. It is a gift or reward given by the casinos to their most frequent customers. It cannot be redeemed for cash.

In terms of Section 64 (1) of the Western Cape Gambling and Racing Act 4 of 1996 gambling tax is payable on taxable revenue, which is defined in the Act as the adjusted gross revenue (AGR) less admissible deductions. AGR is defined as the 'drop' less fills in the slot machine and winnings paid out. The 'drop' is defined as 'the amount deducted from players' slot accounts as a result of slot machine play'.

In both the high court and the SCA at the heart of the interpretative exercise was the meaning to be given to the language used to define the 'drop'. The casinos' interpreted the words used to exclude freeplay, essentially because the word 'amount' in the expression 'amount deducted from players' slot account . . .' means 'amount of money' deducted from the players' slot account. That, according to the casinos, refers to the players' own funds, and excludes freeplay. They argued, in addition, that because they neither gain revenue nor derive any kind of benefit from freeplay gambling, it could have never been the intention to cause them to pay gambling tax thereon. Payment of gambling tax in respect of freeplay gambling constitutes arbitrary deprivation of property because when players win the casinos are left poorer from paying out the winnings.

The Board argued that there is no distinction in the Act between gambling with freeplay and with players' own resources. It maintained that the word 'amount' referred to all the deductions made from the players' slot account as players gamble on the slot machines.

The high court agreed with the casinos' interpretation of the relevant provisions of the Act and held that no gambling tax was payable on freeplay. However, in reversing the high court decision found that the casino's interpretation was based on an approach which was inconsistent with the accepted principles of interpretation of legal documents. It found that on the casinos' interpretation a word - revenue (or money) – would have to be impermissibly read into the definition of the 'drop', even though the section was not ambiguous. In addition, the argument relating to unconstitutionality of the Board's interpretation found no support in the Act. The court found the Board's interpretation consistent with the language used in the Act and in support of inclusion of freeplay in taxable revenue on which gambling tax is payable.

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