

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CASE NO. ~~1-04617 CA 21~~

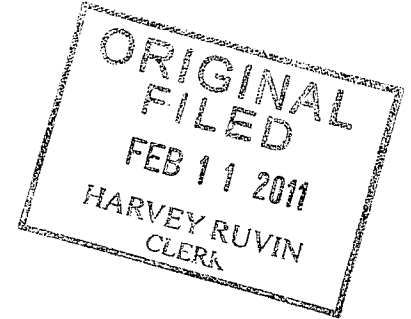
HIALEAH RACING ASSOCIATION,  
LLC, a Florida limited liability company,  
SOUTH FLORIDA RACING  
ASSOCIATION, LLC, a Florida  
limited liability company, and BAL BAY  
REALTY, LTD, a Florida limited  
partnership,

Plaintiffs,

v.

WEST FLAGLER ASSOCIATES,  
LTD, a Florida limited partnership,  
CALDER RACE COURSE, INC., a  
Florida corporation, and TROPICAL  
PARK, INC., a Florida corporation,

Defendants.



COMPLAINT

Plaintiffs HIALEAH RACING ASSOCIATION, LLC, a Florida limited liability company, and SOUTH FLORIDA RACING ASSOCIATION, LLC, a Florida limited liability company, and BAL BAY REALTY, LTD., a Florida partnership, sue Defendants WEST FLAGLER ASSOCIATES, LTD, a Florida limited partnership, CALDER RACE COURSE, INC., a Florida corporation, and TROPICAL PARK, INC., a Florida corporation, allege as follows:

1. Plaintiff HIALEAH RACING ASSOCIATION, LLC ("HIALEAH LLC"), is a Florida limited liability company that maintains its principal place of business at 2200 East Fourth Avenue, Hialeah, Miami-Dade County, Florida. HIALEAH LLC held a pari-mutuel gaming permit that specifically authorized pari-mutuel wagering on thoroughbred horse races (the "HIALEAH Permit"), to be conducted at the race track facility located in Hialeah, Florida,

known as Hialeah Park ("Hialeah Park"). Formed in 2000, HIALEAH, LLC acquired the HIALEAH Permit from its predecessor, Hialeah, Inc., a Florida corporation, along with all rights and claims Hialeah, Inc. had with respect to the HIALEAH Permit. The transfer of the HIALEAH Permit was previously approved by the State of Florida Department of Business and Professional Regulation Division of Pari-Mutuel Wagering (the "Division"). The ownership of both HIALEAH LLC and Hialeah, Inc. was and is identical. Accordingly, all references herein to "HIALEAH" shall refer to HIALEAH, LLC and Hialeah, Inc., collectively.

2. Plaintiff SOUTH FLORIDA RACING ASSOCIATION, LLC ("SFRA"), is a Florida limited liability company that maintains its principal place of business at 2200 East Fourth Avenue, Hialeah, Florida. The ownership of SFRA and HIALEAH are identical. SFRA is the owner and holder of a pari-mutuel gaming permit that specifically authorizes pari-mutuel wagering on quarter horse races conducted at Hialeah Park. SFRA currently conducts quarter horse racing at Hialeah Park.

3. Plaintiff BAL BAY REALTY, LTD. ("BAL BAY"), is a Florida limited partnership that maintains its principal place of business at 2200 East First Avenue, Hialeah, Florida. During 2004, BAL BAY acquired the Hialeah Park facility from Hialeah, Inc., along with all rights and claims regarding Hialeah Park. The ownership of BAL BAY is identical to the ownership of HIALEAH and SFRA.

4. Defendant WEST FLAGLER ASSOCIATES, LLC, ("FLAGLER"), is a limited liability company organized, existing, and in good standing under the laws of the State of Florida. FLAGLER holds a pari-mutuel gaming permit that specifically authorizes pari-mutuel wagering on greyhound racing at a dog track facility located in Miami-Dade County, Florida, known as Flagler Race Track.

5. Defendant CALDER RACE COURSE, INC. ("CALDER"), is a corporation organized, existing, and in good standing under the laws of the State of Florida. CALDER holds a pari-mutuel gaming permit that specifically authorizes pari-mutuel wagering on thoroughbred horse races conducted at a race track facility located in Miami-Dade County, Florida, known as Calder Race Track.

6. Defendant TROPICAL PARK, INC., ("TROPICAL"), is a corporation organized, existing, and in good standing under the laws of the State of Florida. TROPICAL holds a pari-mutuel gaming permit that specifically authorizes pari-mutuel wagering on thoroughbred horse races. TROPICAL currently operates thoroughbred horse racing meets at Calder Race Track.

7. This is an action for the recovery of damages in excess of the jurisdictional limits of this Court for tortious conspiracy and for violations of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), all designed to prevent the operation of slot machines at Hialeah Park, and to put HIALEAH and SFRA out of business. This Court has jurisdiction over this cause pursuant to Article V, §5(B), of the Florida Constitution, and §26.012, Fla. Stat. Venue of this cause properly lies in Miami-Dade County, Florida, because Defendants reside, and the causes of action accrued in Miami-Dade County, Florida.

#### **I. THOROUGHBRED RACING DATES SELECTION PROCESS**

8. In 1931, the HIALEAH Permit was issued by the state of Florida. At the time, HIALEAH was assured through the existing statutes that it would operate its annual race meet without another thoroughbred race track in South Florida racing at the same time.

9. HIALEAH purchased the HIALEAH Permit in 1977, and has thereafter continuously owned the HIALEAH Permit. The law then in effect regulating thoroughbred horse racing ensured that all permit holders, including HIALEAH, would operate exclusively during specified dates. At the time, there were three thoroughbred permit holders in Miami-Dade County,

HIALEAH, CALDER and TROPICAL. There was also one thoroughbred permit holder in Broward County, Gulfstream Park ("Gulfstream").

10. Until the early 1970's, TROPICAL operated at a racetrack known as Tropical Park. CALDER operates at a racetrack known as Calder Race Track. Since the early 1970's, TROPICAL and CALDER have had an arrangement between them, pursuant to which TROPICAL leases Calder Race Track, and conducts all of its thoroughbred horse races at Calder Race Track. Indeed, years ago, TROPICAL sold the Tropical Park facility, so that TROPICAL does not own a facility at which it can conduct thoroughbred horse racing.

11. From 1978 through 1988, the four South Florida thoroughbred permit holders, HIALEAH, CALDER, TROPICAL and Gulfstream, each operated exclusive racing meets. Specifically, the regulatory scheme then in effect created specified racing periods, during each of which one thoroughbred permit holder exclusively operated (each such period referred to as a "Racing Period").

12. During 1988, §550.52, Fla. Stat., was enacted, which, for the first time since pari-mutuel wagering was authorized in Florida in 1931, "deregulated" thoroughbred racing dates in south Florida. The legislation repealed the prohibition against head to head competition among South Florida thoroughbred permit holders, eliminated the Racing Periods, and gave the permit holders the right to select the dates on which they would operate.

13. Specifically, each thoroughbred permit holder was required to submit an application to the Division to obtain a license to operate on dates selected by the applicant. Once a license was issued, the permit holder was authorized to operate only during the dates specified in the license, and was obligated to operate on all of the authorized dates. Further, the newly enacted §550.52 also included a provision that, for the first time since pari-mutuel wagering was

authorized in Florida, subjected a thoroughbred permit holder to the forfeiture of its permit if it failed to operate on any of the dates on which it was licensed to operate.

14. For the 1989 - 1990 seasons, CALDER, TROPICAL and Gulfstream collectively selected all available racing dates, without any conflict or overlap among them, so that there were no dates remaining for HIALEAH to operate without competition. Specifically, CALDER and TROPICAL coordinated their respective selection of dates on which they would operate to ensure that they would not compete with Gulfstream or with each other, and to ensure there would not be any dates available for HIALEAH to operate free from competition from one of the three tracks.

15. During November and December 1989, HIALEAH and TROPICAL operated simultaneously for six weeks before racing at Hialeah Park was discontinued. Facing competition from TROPICAL rendered HIALEAH unable to operate a viable meet for reasons beyond HIALEAH's control. There were insufficient horses and patrons to sustain the two simultaneously operating race tracks. Further, CALDER, TROPICAL and others threatened horse owners that if they ran their horses at HIALEAH, they would be banned from racing at their respective tracks. For these same reasons, HIALEAH was unable to operate through October 1991. During this time, the Division never sought to revoke the HIALEAH Permit for failure to operate.

16. During late 1991, HIALEAH resumed racing at Hialeah Park.

17. In 1993, thoroughbred racing date allocation was again regulated by the legislature (the "1993 Legislation"). Pursuant to the 1993 Legislation, the four south Florida tracks were again required to apply for Racing Periods. While a permit holder was free to choose to operate during more than one Racing Period, there were substantial adverse tax consequences to the permit holder for doing so. As a result, each of the four thoroughbred permit holders selected

dates and conducted racing during only one of the Racing Periods, so they did not compete head to head with each other. HIALEAH was able to operate a meet in 1993, and continued to do so through 2001.

## **II. THE DEREGULATION OF DATES AND CONSPIRACY AGAINST HIALEAH**

18. The 1993 Legislation provided that it would sunset, at which time it would no longer be of force or effect. Upon the sunset of the 1993 Legislation, the thoroughbred permit holders would again be free to select any dates on which to operate, without any financial penalty for selecting dates during more than one Racing Period.

19. The terms of the 1993 Legislation were extended and remained in effect through June 30, 2001, enabling HIALEAH to continue to operate through that date. By 2001, CALDER, TROPICAL and others had determined to collectively put HIALEAH out of business, and to eliminate HIALEAH and racing at Hialeah Park. Towards this end, CALDER, TROPICAL and others engaged in concerted action designed to prevent the enactment of new legislation that would either extend the effectiveness of the 1993 Legislation, or otherwise ensure that the thoroughbred permit holders would each operate during exclusive Racing Periods. CALDER and TROPICAL knew from the events of the 1989 meet that HIALEAH would not be able to operate in head to head competition with any of them. CALDER, TROPICAL and others planned that once the 1993 Legislation sunset, they would again select racing dates so they would not compete against one another, and HIALEAH would be forced to always compete with one or all of them.

20. As a result, prior to the 2002 racing season, the legislature did not further extend the effectiveness of the 1993 Legislation, or otherwise regulate the selection of racing dates. Instead, for the 2002 racing season, thoroughbred permit holders were able to select any dates of operation and to run against each other, without being subject to any adverse tax consequences.

21. In furtherance of the scheme to put HIALEAH out of business, when it was time for the thoroughbred permit holders to apply for dates to operate during the 2002 racing season, CALDER and TROPICAL again agreed to select dates that were free of competition from one another, and from Gulfstream, so that these three tracks were never going to be operating at the same time. Further, CALDER and TROPICAL selected their dates together so that, with Gulfstream's selected dates, there were no dates that HIALEAH could select and operate free from competition. CALDER and TROPICAL agreed to, and selected their racing dates for the 2002 racing season such that HIALEAH again found itself always subjected to head to head competition from one of the other three south Florida thoroughbred tracks.

22. HIALEAH applied for dates to race during 2002. When HIALEAH learned that there were no dates available on which it would be able to operate free from competition, HIALEAH attempted to reach an accommodation with the other thoroughbred permit holders to secure dates to operate free of competition. When these efforts failed, HIALEAH determined that the same factors beyond its control that forced the termination of its 1989 race meet continued to exist. As a result, HIALEAH was unable to, and did not operate during 2002.

23. When HIALEAH was unable to operate during 2002, CALDER and others solicited the Division to institute an administrative proceeding against HIALEAH to revoke the HIALEAH Permit for its failure to operate. On or about February 15, 2003, the Division filed an administrative complaint against HIALEAH seeking to revoke its pari-mutuel permit for failure to operate a race meet in 2002 (the "Administrative Proceeding").

24. On or about September 30, 2004, a recommended Order was rendered in the Administrative Proceeding, recommending the revocation of the HIALEAH Permit. The recommended Order was adopted, and the Division revoked the HIALEAH Permit.

### **III. THE CONSPIRATORS EXCLUDE HIALEAH PARK FROM HAVING THE RIGHT TO OPERATE SLOT MACHINES**

25. During 2004, CALDER, TROPICAL, FLAGLER and others (collectively the "Conspirators"), were pursuing efforts to present a proposed constitutional amendment to the Florida electorate that was designed to authorize the operation of slot machines at pari-mutuel facilities in Miami-Dade and Broward counties, if approved by a referendum in the county (the "Slots Amendment"). The Conspirators actively participated in the process of the drafting of the Slots Amendment.

26. The Conspirators drafted the proposed Slots Amendment to expressly limit the right to operate slot machines to those licensed pari-mutuel facilities that had conducted live racing or games during each of the last two calendar years before the effective date of the amendment. At the time, the only licensed pari-mutuel facility in Miami-Dade or Broward counties that had not operated during the two preceding years was Hialeah Park. Having prevented HIALEAH from operating, the Conspirators orchestrated the drafting of the proposed Slots Amendment with this limitation for the express purpose of excluding Hialeah Park from being included as a facility authorized to operate slot machines.

27. On November 2, 2004, the Slots Amendment was approved, and became effective.

28. During 2008, Miami-Dade County held a referendum pursuant to the Slots Amendment, through which the electorate of Miami-Dade County voted to authorize pari-mutuel facilities to operate slot machines (the "Referendum"). As a result, CALDER, TROPICAL, FLAGLER and Miami Jai-Alai, the pari-mutuel facilities located in Miami-Dade County that operated during 2002 and 2003, became authorized to obtain licenses to operate slot machines at their respective facilities (a "Slots License").



29. CALDER and TROPICAL continue to conduct thoroughbred horseracing at Calder Race Track. Pursuant to the Constitutional Amendment, CALDER has secured a Slots License, and operates slot machines at Calder Race Track. FLAGLER continues to conduct dog racing at Flagler Dog Track. FLAGLER has secured a Slots License and operates slot machines at its facility. Since the Slots Amendment does not expressly authorize the operation of slot machines at Hialeah Park, no slot machines have been operated at the facility.

**IV. FLAGLER AND CALDER CHALLENGE THE STATUTE  
WHICH AUTHORIZES SLOT MACHINES AT HIALEAH PARK**

30. In 2008, the Florida legislature passed legislation authorizing quarterhorse racing. During 2009, the Division issued a quarter horse permit to SFRA, authorizing SFRA to conduct pari-mutuel wagering on quarter horse races run at Hialeah Park. Pursuant to its permit and a license issued by the Division, SFRA operated quarter horse race meets at Hialeah Park during 2009 and 2010. SFRA's third meet commenced during December 2010, and continued into 2011.

31. Effective July 1, 2010, the Florida Legislature enacted legislation that authorizes the operation of slot machines at qualifying pari-mutuel facilities (the "Eligible Facilities Legislation"). Hialeah Park qualifies as an "eligible facility" pursuant to the Eligible Facilities Legislation. In reliance thereon, SFRA commenced the process of applying for a slot machine license, and expended substantial sums planning to construct facilities at Hialeah Park at which slot machines can be operated.

32. During June 2010, CALDER and FLAGLER filed lawsuits seeking to invalidate the Eligible Facilities Legislation. These lawsuits were filed in furtherance of the ongoing conspiracy to eliminate competition from Hialeah Park, and to interfere with, and ultimately prevent SFRA from operating slot machines at Hialeah Park.

33. SFRA succeeded in obtaining summary final judgment in its favor with respect to Count I of the lawsuits filed by CALDER and FLAGLER. Further, SFRA has secured a license to operate slot machines at Hialeah Park. Plaintiffs have begun spending, and have committed to spend tens of millions of dollars to upgrade and develop Hialeah Park to be able to operate slot machines.

34. On or about December 20, 2010, CALDER and FLAGLER voluntarily dismissed the remaining counts of their respective Complaints, and have appealed the entry of summary judgment against them on Count I.

35. Plaintiffs have performed all conditions precedent to the maintenance of this action.

#### **COUNT I – VIOLATIONS OF FDUTPA**

36. Plaintiff s incorporate by reference paragraphs 1 through 35.

37. Plaintiffs are consumers, as that term is defined pursuant to §501.203(7) Fla.Stat.

38. CALDER, TROPICAL, and FLAGLER together, and along with the remaining Conspirators, have engaged in unfair methods of competition, and have committed unfair acts and practices in the conduct of their trade and commerce, in violation of §501.204(1), Fla. Stat.

39. CALDER, TROPICAL, FLAGLER and the other Conspirators have engaged in a pattern of conduct, and have committed numerous acts in furtherance of their objective of putting HIALEAH and SFRA out of business and preventing the operation of slot machines at Hialeah Park. In an effort to accomplish this objective, CALDER, TROPICAL, FLAGLER and others have engaged in unfair methods of competition and committed unfair acts and practices, with each of them participating in certain acts, including and not limited to each of the following:

- a. engaging in concerted action designed to prevent the enactment of legislation to regulate thoroughbred racing dates.

- b. coordinating the selection of racing dates for 2002 among CALDER, TROPICAL and Gulfstream, so that these three tracks would not operate against one another, and to ensure that HIALEAH would not be able to operate free from competition.
- c. soliciting the Division to institute the Administrative Proceeding, which resulted in the revocation of the HIALEAH Permit as a result of the Conspirators' actions which prevented HIALEAH from operating.
- d. participating in the drafting of the Slots Amendment, to ensure that Hialeah Park was the only pari-mutuel facility in either Miami-Dade or Broward County that was excluded from obtaining the express opportunity to conduct gaming pursuant to the Slots Amendment.
- e. instituting litigation challenging the validity of the Eligible Facilities Legislation, in an effort to prevent SFRA from operating slot machines at Hialeah Park.

40. Plaintiffs first suffered damages as a proximate result of CALDER, TROPICAL and FLAGLER'S actions, which have prevented the operation of slot machines at Hialeah Park, during 2008, after the Referendum. Plaintiffs have suffered millions of dollars of damages annually, and shall continue to do so until late 2011, at the earliest. Plaintiffs' ongoing damages shall only cease to continue to accrue when the construction of a slot machine gaming facility is completed, and slot machines are operated at Hialeah Park.

41. Plaintiffs have retained the undersigned law firms to represent them in the maintenance of this action and have obligated themselves to pay a reasonable attorney's fee therefor. Pursuant to §501.2105(1), Fla. Stat., Plaintiffs are entitled to recover their attorney's fees from CALDER, TROPICAL, and FLAGLER.

WHEREFORE, HIALEAH and SFRA demand judgment in their favor and against CALDER, TROPICAL, and FLAGLER, jointly and severally, for compensatory damages, prejudgment interest thereon, the recovery of reasonable attorney's fees, the cost of the maintenance of this action, and, for such further relief as is deemed just and equitable.

**COUNT II – TORTIOUS CONSPIRACY**

42. Plaintiffs incorporate by reference paragraphs 1 through 35.

43. CALDER, TROPICAL, FLAGLER and others have engaged in concerted actions designed for the express malicious purposes of preventing the operation of slot machines at Hialeah Park, and putting HIALEAH and SFRA out of business. CALDER, TROPICAL, FLAGLER and the others were only capable of accomplishing their objective of preventing the operation of slot machines at Hialeah Park and putting HIALEAH and SFRA out of business by reason of the force of their collective numbers. In this regard, CALDER, TROPICAL, FLAGLER nor anyone else, could have independently accomplished the damage that has been caused to Plaintiffs by virtue of the concerted action of all of the Conspirators.

44. Further, given the high level of regulation of the thoroughbred and gaming industries, and the Conspirators' collective power of coercion, which power no one of them solely possessed, exceptional circumstances exist which render the Conspirators liable for their concerted actions, even if their conduct, if committed by any one of them, is not actionable.

45. Acts committed by CALDER, TROPICAL, FLAGLER and the other Conspirators in furtherance of this conspiracy, with each of them participating in certain acts, include, and are not limited to each of the following:

- a. engaging in concerted action designed to prevent the enactment of legislation to regulate the selection of thoroughbred racing dates.

- b. coordinating the selection of racing dates for 2002 among CALDER, TROPICAL and Gulfstream, so that these three tracks would not operate against one another, and to ensure that HIALEAH would not be able to operate free from competition.
- c. soliciting the Division to institute the Administrative Proceeding, which resulted in the revocation of the HIALEAH Permit, as a result of the Conspirators' actions which prevented HIALEAH from operating.
- d. participating in the drafting of the Slots Amendment, to ensure that Hialeah Park was the only pari-mutuel facility in either Miami-Dade or Broward County that was excluded from obtaining the express opportunity to conduct gaming pursuant to the Slots Amendment.
- e. instituting litigation challenging the validity of the Eligible Facilities Legislation, in an effort to prevent SFRA from operating slot machine gaming at HIALEAH Park.

46. Plaintiffs first suffered damages as a proximate result of CALDER, TROPICAL and FLAGLER'S actions, which have prevented the operation of slot machines at Hialeah Park, during 2008, after the Referendum. Plaintiffs have suffered millions of dollars of damages annually, and shall continue to do so until late 2011, at the earliest. Plaintiffs' ongoing damages shall only cease to continue to accrue when the construction of a slot machine gaming facility is completed, and slot machines are operated at Hialeah Park.

WHEREFORE, Plaintiffs demand judgment in their favor and against CALDER, TROPICAL, and FLAGLER, jointly and severally, for compensatory damages, prejudgment interest thereon, the cost of the maintenance of this action, and for such further relief as is deemed just and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all matters so triable.

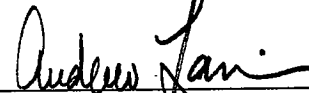
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