UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.

UNITE HERE LOCAL 355,

Plaintiff,

v.

HOLLYWOOD GREYHOUND TRACK, INC., d/b/a MARDI GRAS GAMING; HARTMAN & TYNER, INC. d/b/a MARDI GRAS CASINO; and HOLLYWOOD CONCESSIONS, INC.,

Defendants.
_____/

COMPLAINT TO COMPEL ARBITRATION

Plaintiff UNITE HERE Local 355 ("Union"), pursuant to 29 U.S.C. § 185(a) and the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, hereby petitions to compel arbitration of a dispute with Defendants Hollywood Greyhound Track, Inc., d/b/a Mardi Gras Gaming; Hartman & Tyner, Inc. d/b/a Mardi Gras Casino; and Hollywood Concessions, Inc.

PARTIES

1. The Union is a "labor organization" representing employees in industries affecting commerce within the meaning of Section 2(5) of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 152(5). The Union maintains its headquarters in Miami, Florida.

2. Defendant Hollywood Greyhound Track, Inc., d/b/a Mardi Gras Gaming ("Mardi Gras") has been an "employer" engaged in interstate commerce within the meaning of Section 2(2) of the LMRA, 29 U.S.C. § 152(2). It has engaged in business at a pari-mutuel dog-racing track and related operations in Hallandale Beach, Florida.

3. Defendant Hartman & Tyner, Inc. d/b/a Mardi Gras Casino ("Hartman & Tyner") is an "employer" engaged in interstate commerce within the meaning of Section 2(2) of the LMRA, 29 U.S.C. § 152(2). It is closely related to Mardi Gras, sharing officers and employees. It helps operate the pari-mutuel dog-racing track and casino in Hallandale Beach, Florida.

4. Defendant Hollywood Concessions, Inc. ("Hollywood Concessions") is an "employer" engaged in interstate commerce within the meaning of Section 2(2) of the LMRA, 29 U.S.C. § 152(2). It is closely related to Mardi Gras, sharing officers and employees. It operates concessions at the pari-mutuel dog-racing track and casino in Hallandale Beach, Florida.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this dispute pursuant to Section 301(a) of the LMRA, 29 U.S.C. § 185(a), as well as the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, and 28 U.S.C § 1331.

6. This Court is the proper venue for this action pursuant to 29 U.S.C. § 185(a) and 28 U.S.C. §1391(b)(1) and (2).

GENERAL ALLEGATIONS

7. The Union and Mardi Gras are parties to an agreement that requires arbitration to resolve disputes ("the Agreement"). A true and correct copy of the Agreement is attached hereto as Exhibit A. The Agreement went into effect on or about December 28, 2006, the date on which Mardi Gras began operating slot machines open to the public. The Agreement was to expire four years later.

8. The Agreement contains a neutrality provision, obligating each party to not disparage the other in the event of a Union organizing campaign. Mardi Gras agreed to take no

actions that imply opposition to Unionization. Agreement at ¶4. The Agreement further provides that Mardi Gras will provide the Union with lists of employees' names and contact information. *Id.* at ¶8. Any disputes over the interpretation or application of the Agreement are to be submitted to arbitration. *Id.* at ¶14.

9. Mardi Gras initially complied with the Agreement but in 2008 ceased to do so. The Union filed suit to compel arbitration to remedy Mardi Gras's breach of the Agreement. That case was docketed as *UNITE HERE Local 355 v. Hollywood Greyhound Track, Inc., d/b/a Mardi Gras Gaming*, Case No. 08-61655-CIV-Seitz/O'Sullivan. Judge Seitz entered an order compelling Mardi Gras to participate in arbitration.

10. The parties selected Arbitrator Arnold Zack, who conducted an arbitration on June 17, 2009. On August 6, 2009, Arbitrator Zack issued his award. A copy of that Award (hereafter, the "Zack Award") is attached as Exhibit B. Arbitrator Zack found the Agreement to be lawful and extended the term of the Agreement by one year, to December 31, 2011.

11. Mardi Gras then filed suit to vacate the Zack Award on November 4, 2009. That case, *Hollywood Greyhound Track, Inc. v. UNITE HERE Local 355*, CASE NO. 09-61760-CIV-ZLOCH/ROSENBAUM, resulted in an order confirming Arbitrator Zack's award in part. The Court found that Arbitrator Zack exceeded his authority by extending the term of the Agreement by one year; "the portion of the Arbitrator's Award that extends the Parties' Agreement by an additional year, to December 31, 2011, ... will be vacated ..." *See* D.E. 38, Order, at 6. However, in all other regards the Court affirmed the Zack Award. *Id.* at 8. That order issued on August 6, 2010.

12. In 2009 Mardi Gras distributed a flier to employees attacking the Union. The Union contended that Mardi Gras thereby violated the Agreement and demanded arbitration.

The parties selected Jerome Ross to serve as the arbitrator, and on January 29, 2010, Arbitrator Ross conducted a hearing.

13. By written award dated April 23, 2010, Arbitrator Ross ruled that Mardi Gras had breached the Agreement. A copy of his award ("Ross Award") is attached hereto as Exhibit C. Arbitrator Ross ordered Mardi Gras to comply with the Agreement for one year past whatever date was ultimately found appropriate under the terms of the Zack Award. At the time the Ross Award issued the parties were engaged in ongoing litigation over the Zack Award.

14. Mardi Gras did not seek to vacate or modify the Ross Award, nor otherwise advise the Union of any objections to arbitrability or to the Award. However, it refused to comply with the Ross Award.

15. The Agreement would have expired by its terms in December 2010. Because Arbitrator Zack's extension of the Agreement by one year was vacated by Judge Zloch, the Agreement would have expired on December 31, 2010. Thus the Ross Award would extend the duration of the Agreement by one additional year, to December 31, 2011.

16. On January 7, 2011, the Union filed suit to compel Mardi Gras to comply with the Ross Award. *See Unite Here Local 355 v. Hollywood Greyhound Track, Inc.*, 11-CV-60047-WJZ. On June 30, 2011, Judge Zloch entered an order confirming the Ross Award. *See* D.E. 10 and 11.

17. The following month Mardi Gras complied with the Agreement by forwarding a list of employees and contact information to the Union.

18. Beginning in October 2011 Mardi Gras's officers and agents began interrogating employees regarding their Union related activities and making negative comments about the Union. These acts violated the Agreement's neutrality provisions. Shortly thereafter Mardi Gras

engaged in even more egregious conduct, terminating ten Union activists over the course of the month of November, all in violation of the Agreement.

19. On November 15, 2011, the Union sent Dan Adkins, the principal agent of Defendants, a "cease and desist" letter demanding arbitration to challenge Mardi Gras's violations of the Agreement. The American Arbitration Association sent Adkins a panel of potential arbitrators at the Union's request.

20. By letter dated November 22, 2011, Defendants through counsel claimed that the Agreement had expired in October 2011 and that they would not participate in arbitration. To date Defendants have taken no steps to advance the parties' dispute to arbitration, such as selecting an arbitrator or scheduling a hearing.

Count I – To Compel Mardi Gras to Arbitrate

21. Plaintiff incorporates herein the foregoing paragraphs.

22. The Union claims that by interrogating employees about their Union sympathies, disparaging the Union, and terminating Union activists and supporters, Defendants have violated the Agreement.

24. This is a claim covered by the arbitration clause of the Agreement as all disputes over the interpretation and application of the Agreement are to be submitted to binding arbitration.

25. The parties' dispute over whether the Agreement was in full force and effect in October and November 2011 is an arbitrable matter, but if not, the Court should find the Agreement remained in effect during that time period. Mardi Gras is therefore obligated to participate in arbitration.

The Union requests that this Court:

a) enter a judgment compelling Mardi Gras to participate in arbitration to resolve the parties' dispute over the terminations of Union supporters, interrogations of employees, disparagement of the Union, and other violations of the Agreement;

b) award Plaintiff its costs and reasonable attorneys' fees expended to compel arbitration of the parties' dispute; and

c) issue all other relief the Court may deem necessary and proper.

Count II – To Compel Hartman & Tyner to Arbitrate

26. Plaintiff incorporates herein the foregoing paragraphs.

27. The Agreement contains a very broad definition of "Employer":

> The term 'Employer' shall be deemed to include any person, firm, partnership, corporation, joint venture or other legal entity substantially under the control of: (a) The Employer covered by this Agreement; (b) one or more principal(s) of the Employer covered by this Agreement; (c) a subsidiary of the Employer covered by this Agreement; or (d) any person, firm, partnership, corporation, joint venture or other legal entity which substantially controls the Employer covered by this Agreement.

Ex. A at ¶1.

28. The Agreement also obligates any purchaser, successor, or assignee of Mardi Gras to assume in writing the terms of the Agreement as a condition of such purchase, succession, or assignment. *Id.* at ¶12. Similarly any entity in any way employing employees subject to the Agreement at the Hallandale Beach facility, whether through a subcontract, lease, or otherwise, is legally obligated to abide by the terms of the Agreement. *Id.* at ¶13.

29. It is the Union's understanding that Hartman & Tyner has informed the National Labor Relations Board that it is an employer of one or more of the terminated employees.

30. It is the Union's position that Hartman & Tyner is either an "Employer" as that term is defined by the Agreement or is otherwise bound to the terms of the Agreement by virtue of ¶12 and/or ¶13.

31. It is the Union's position that Hartman & Tyner shares in the liability for the violations of the Agreement alleged above.

32. It is the Union's position that the Agreement remained in full force and effect in October and November 2011.

33. Some or all of the Union's claims give rise to disputes over the interpretation and application of the Agreement and accordingly are within the scope of the Agreement's arbitration clause.

34. Hartman & Tyner is therefore obligated to participate in arbitration over some or all of the Union's claims.

The Union requests that this Court:

a) enter a judgment compelling Hartman & Tyner to participate in arbitration to resolve the parties' dispute over the terminations of Union activists and supporters employed by Defendants and any other violations of the Agreement;

b) award the Union its costs and reasonable attorneys' fees expended to compel arbitration of the parties' dispute; and

c) issue all other relief the Court may deem necessary and proper.

Count III – To Compel Hollywood Concessions to Arbitrate

35. Plaintiff incorporates herein the foregoing paragraphs.

36. The Agreement contains a very broad definition of "Employer":

> The term 'Employer' shall be deemed to include any person, firm, partnership, corporation, joint venture or other legal entity substantially under the control of:

> (a) The Employer covered by this Agreement; (b) one or more principal(s) of the Employer covered by this Agreement; (c) a subsidiary of the Employer covered by this Agreement; or (d) any person, firm, partnership, corporation, joint venture or other legal entity which substantially controls the Employer covered by this Agreement.

Ex. A at ¶1.

37. The Agreement also obligates any purchaser, successor, or assignee of Mardi Gras to assume in writing the terms of the Agreement as a condition of such purchase, succession, or assignment. *Id.* at ¶12. Similarly any entity in any way employing employees subject to the Agreement at the Hallandale Beach facility, whether through a subcontract, lease, or otherwise, is legally obligated to abide by the terms of the Agreement. *Id.* at ¶13.

38. It is the Union's understanding that Hollywood Concessions has informed the National Labor Relations Board that it is an employer of one or more of the terminated employees.

39. It is the Union's position that Hollywood Concessions is either an "Employer" as that term is defined by the Agreement or is otherwise bound to the terms of the Agreement by virtue of ¶12 and/or ¶13.

40. It is the Union's position that Hollywood Concessions is liable for some or all of the violations of the Agreement alleged herein. .

41. It the Union's position that the Agreement remained in full force and effect in October and November 2011

42. Some or all of these claims represent disputes over the interpretation and application of the Agreement and accordingly must be submitted to binding arbitration.

43. Hollywood Concessions is therefore obligated to participate in arbitration of some or all of the Union's claims.

The Union requests that this Court:

a) enter a judgment compelling Hollywood Concessions to participate in arbitration to resolve the parties' dispute over the terminations of Union activists and supporters employed by Defendants and any other violations of the Agreement;

b) award the Union its costs and reasonable attorneys' fees expended to compel arbitration of the parties' dispute; and

c) issue all other relief the Court may deem necessary and proper.

Submitted this 7th day of June, 2012,

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