



IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

03995

WILLAMETTE CREST GAMING, LLC,
JULIA WERNER, MICHAEL WERNER,
DAVID GLAD, and TRICIA GLAD,

Plaintiffs,

v.

PLAY N TRADE FRANCHISE, INC., SAN
CLEMENTE CAPITAL, LLC, CAAZ
MANAGEMENT, LLC, T-STREET
MANAGEMENT, INC., RON SIMPSON, and
YUVI SHMUL

Defendants.

Case No. **0903-03995**

COMPLAINT

(ORS 650.020; Fraud)

**CLAIM IS NOT SUBJECT TO
MANDATORY ARBITRATION**

FILED
MAY 23 2009
CLERK OF COURT
JULIA WERNER

Plaintiffs allege:

1.

At all times material herein, Plaintiff Willamette Crest Gaming, LLC ("WCG") was and is a duly organized Oregon limited liability company in good standing. The members of WCG are Plaintiffs Julia Werner, Michael Werner, David Glad and Tricia Glad. At the time of this action, all Plaintiffs are Oregon residents.

2.

Plaintiff Willamette Crest Gaming, LLC is a franchisee as that term is defined in ORS 650.005(5). Plaintiffs Julia Werner, Michael Werner, David Glad and Tricia Glad are "prospective franchisees" as that term is used in OAR 441-325-0020.

1 3.

2 Defendant Play N Trade, Inc. ("PNT") is a Nevada corporation that was incorporated on
3 October 13, 2003. PNT began offering franchises in October 2003. PNT conducts business
4 under the tradename "Play N Trade." In April 2006, PNT sold additional shares of capital stock,
5 reorganized its officers, changed its principal place of business from Massachusetts to California
6 and converted from a Subchapter "S" corporation to a "C" corporation. PNT registered with the
7 State of California as a foreign corporation on September 11, 2006.

8 4.

9 PNT's owner and parent company is Defendant San Clemente Capital, LLC ("SCC"), an
10 Arizona limited liability company, which was organized on March 29, 2006. Defendant CAAZ
11 Management, LLC ("CAAZ"), an Arizona limited liability company, which was organized on
12 March 29, 2006, is the managing member of SCC. Defendant T-Street Management, Inc.
13 ("TSM"), a California corporation that was incorporated on May 9, 2006, is a wholly-owned
14 subsidiary of CAAZ. TSM directly manages the business operations of PNT, including franchise
15 marketing and sales. PNT pays TSM a management fee for TSM's services.

16 5.

17 Defendant Ron Simpson is PNT's founder. At all times material, Defendant Simpson
18 was PNT's Chairman of the Board and former Chief Executive Officer.

19 6.

20 At all times material, Defendant Yuvi Shmul was PNT's Chief Executive Officer and
21 Board member. Defendant Shmul is a Manager of Defendant CAAZ.

22 7.

23 At all times material, Defendants Ron Simpson and Yuvi Shmul were California
24 residents. At all times material herein, Defendants marketed, directly or indirectly, franchises in
25 Oregon under the tradename "Play N Trade."

8.

Defendants Ron Simpson, Yuvi Shmul, SCC, CAAZ, TSM, and PNT are franchisors, as that term is defined in ORS 650.005(6).

9.

In or about January 2007, Ms. Werner contacted Defendant PNT for information about the franchise opportunity. On or about January 2007, Ms. Werner obtained from Defendant PNT a packet of information about the Play N Trade franchise. Ms. Werner then submitted personal information that was required of prospective franchisees to PNT through its Web site. Within a short time, Ms. Werner received a telephone call from Defendant PNT's sales representative and area developer, Heath Woodbury, to discuss the franchise opportunity. On or about January 31, 2007, Defendant PNT sent Ms. Werner a copy of PNT's Uniform Franchise Offering Circular ("UFOC") dated September 7, 2006. Ms. Werner faxed the receipt for the UFOC to Mr. Woodbury that same day. At that time, Plaintiffs Michael Werner and Julia Werner were California residents and Plaintiffs David Glad and Tricia Glad were Oregon residents. The PNT UFOC that was given to Ms. Werner is attached hereto as Exhibit 1 and is incorporated herein.

10.

Based on the information in the UFOC and based on information provided to them by PNT officers and personnel, on or about February 15, 2007, Plaintiffs Michael Werner, Julia Werner, David Glad and Tricia Glad decided to purchase eleven PNT franchises. On or about February 15, 2007, Plaintiffs entered into a franchise agreement with PNT and paid a total franchise fee to PNT in the amount of \$115,000.00. Plaintiff WCG was formed as a limited liability company on February 27, 2007, for the sole purpose of owning and operating the PNT franchises. The franchise agreement executed by Plaintiffs is in the name of Plaintiff WCG.

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11.

After the purchase, WCG opened four PNT franchise locations and have spent approximately \$1,000,000.00 in that process. Seven franchises remain unopened. WCG has not earned any profits from any of the four stores.

12.

Plaintiff WCG is a franchisee, as that term is defined in ORS 650.005(5). Plaintiffs Michael Werner, Julia Werner, David Glad and Tricia Glad are each a "prospective franchisee" as that term is used in OAR 441-325-0020.

13.

Pursuant to OAR 441-325-0020(1), no "franchiser shall sell or offer to sell a franchise in this state unless the franchiser delivers to the prospective franchisee a disclosure statement" that complies with either the "Federal Trade Commission Trade Regulation Rule entitled 'Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,' set forth in 16 CFR 436" (the "FTC Franchise Rule") or the "Uniform Franchise Offering Circular (UFOC) adopted by the North American Securities Administrators Association, Inc."

14.

Both the FTC Franchise Rule and the UFOC require certain categories of information to be provided to a prospective franchisee. As part of the required categories, the following material information must be contained in a disclosure statement:

- a. A franchisor must provide in the UFOC Cover Page information specific to a state in which a prospective franchisee lives or intends to operate a franchise, if required by state law. The California Franchise Relations Act requires its provisions to apply to any franchise sold to a purchaser in California or to someone who intends to operate a franchise in California. In such event, a California-specific addendum to the franchise agreement would be included and would be referenced in the UFOC Cover Page;

b. Item 1 requires disclosure of the business form of the franchisor, including all predecessors and affiliates of the franchisor;

c. Item 8 requires disclosure of any payments received by the franchisor from third-party suppliers because of transactions with franchisees;

d. Item 19 requires that if a franchisor makes an earnings claims on franchisee revenue, there must be supporting data for those claims. An "earnings claim" is defined in the rules as any information given to a prospective franchisee "from which a specific level or range of actual or potential sales, costs, income or profit from franchised or non-franchised units may be easily ascertained."; and

e. Item 22 requires a franchisor to provide a copy of all agreements that a purchaser of a franchise is required to execute.

15.

Exhibit 1, the September 7, 2006 disclosure statement that was provided to Plaintiffs, does not comply with the FTC Franchise Rule or the UFOC in one or more of the following particulars:

a. The UFOC Cover Page does not contain a reference to the California Franchise Relations Act or to any addendum relating to the California law. The UFOC does not contain a California-specific addendum that modifies the terms of the franchise agreement to comply with California law. At the time of the purchase of the franchises, Plaintiffs Michael and Julia Werner were California residents and were unaware of the additional protections that California law provides to franchisees;

b. In Item 1, the UFOC does not contain any information about SCC, CAAZ, or TSM, which were formed and operating at the time that the UFOC was issued;

c. In Item 8, the UFOC states: "In our last fiscal year, PNT did not obtain any revenue payments from its approved suppliers and did not receive any revenues from the sale of Play N Trade equipment or products." On information and belief, Defendant PNT

1 received revenue payments from one or more suppliers;

2 d. In Item 19, Defendants state that Defendants do not make any earnings claims.
3 However, in Item 12 Defendants state that a franchisee must achieve \$250,000 in revenue
4 during the second year, \$300,000 during the third year, \$360,000 during the fourth year,
5 and \$430,00 during the fifth and subsequent years, or the franchise may be terminated.
6 This disclosure was an earnings claim without any of the required supporting data. The
7 revenue amounts, as disclosed by PNT in the UFOC, are information from which a
8 specific level or range of actual or potential sales, costs, income or profit from franchised
9 or non-franchised units may be easily ascertained by the prospective franchisees. PNT's
10 disclosure of these revenue amounts constitutes an earnings claim. Plaintiffs relied on
11 this financial disclosure as a basis to gauge their expected performance as a franchisee;

12 e. Prior to the sale of franchises to Plaintiffs, when one or more of the Plaintiffs
13 inquired to a PNT representative about how much profit they could expect to make,
14 Plaintiffs were instructed to look at the annual reports of PNT's publicly-traded
15 competitors, Game Stop and EB Games, because that information would give Plaintiffs a
16 good idea of the amount of money they would make. This disclosure was an earnings
17 claim, without any of the required supporting data, because a specific level or range of
18 actual or potential sales, costs, income or profit from franchised or non-franchised units
19 may be easily ascertained;

20 f. Prior to the sale of franchises to Plaintiffs, one or more of Plaintiffs asked
21 Defendant Shmul whether or not the minimum sales requirements in Item 12 of the
22 UFOC were achievable. Defendant Shmul stated that the requirements were easily
23 attainable and not to worry about them. He further stated that most PNT franchisees are
24 able to pay back their initial investment in one year. This disclosure was an earnings
25 claim, without any of the required supporting data, because a specific level or range of
26 actual or potential sales, costs, income or profit from franchised or non-franchised units

1 may be easily ascertained. On information and belief, the majority of PNT franchises
2 have not achieved the sales levels listed in Item 12; and

3 g. Item 22 requires the franchisor to attach all agreements that must be executed as
4 part of the purchase of a franchise so that a prospective franchisee can have time to
5 review all contracts before executing them. Defendants required Plaintiffs to execute an
6 agreement called "Play N Trade Franchise, Inc. Statement of Prospective Franchisee" at
7 the same time as the execution of the franchise agreement. This Statement of Prospective
8 Franchisee agreement was not included as part of Defendant PNT's UFOC and was
9 presented to Plaintiffs for the first time when they executed the franchise agreement.

10 CLAIM FOR RELIEF

11 (ORS 650.020(1); OAR 441-325-0020(4))

12 16.

13 Plaintiffs reallege paragraphs 1-15.

14 17.

15 Defendants' acts and omissions as alleged in paragraph 15, above, constitute untrue
16 statements of material facts and omissions of material facts.

17 18.

18 Defendants failed to comply with OAR 441-325-0020(1) by not providing Plaintiffs with
19 the required disclosure statement. Pursuant to OAR 441-325-0020(4), Defendants' failure to
20 provide the disclosure statement is a violation of ORS 650.020(1).

21 19.

22 As a direct result of Defendants' violation of ORS 650.020(1) and OAR 441-325-
23 0020(4), Plaintiffs have been harmed.

24 20.

25 Pursuant to ORS 650.020(3), Plaintiff WCG is entitled to rescission of the franchise
26 agreement and further declares the franchise agreement to be rescinded as of the date of the filing

1 of this action. Plaintiffs are entitled to restitution damages in an amount to be determined at trial
2 but in no event less than \$1,000,000.00. Pursuant to ORS 650.020(3), Plaintiffs Michael
3 Werner, Julia Werner, David Glad and Tricia Glad are entitled to damages in an amount to be
4 determined at trial, but in no event less than \$1,000.00. Plaintiffs are entitled to an award of
5 attorney fees, costs and disbursements pursuant to ORS 650.020(3).

6 **SECOND CLAIM FOR RELIEF**

7 **(Fraud)**

8 **(Plaintiffs Michael Werner, Julia Werner, David Glad and Tricia Glad as against all**
9 **Defendants)**

10 21.

11 Plaintiffs Michael Werner, Julia Werner, David Glad and Tricia Glad reallege paragraphs
12 1-15.

13 22.

14 Defendants' acts and omissions as alleged in paragraph 15, above, constitute material and
15 false representations as well as omissions of material facts.

16 23.

17 Defendants knew that their representations to Plaintiffs were false and that their
18 omissions were material.

19 24.

20 Defendants intended that Plaintiffs would accept their representations and omissions and
21 validated and ratified those representations.

22 25.

23 Defendant Play N Trade, Inc. knew of Defendant Shmul's false representations and
24 omissions and validated and ratified those representations.

26.

Plaintiffs relied on Defendants' representations and omissions. Plaintiffs were unaware of the falsity of those representations.

27.

As a direct and proximate result of Defendants' misrepresentations and omissions, Plaintiffs have been harmed and have suffered damages including, but not limited to, actual and lost opportunity damages, and are entitled to economic and non-economic damages in an amount to be determined at trial, but in no event less than \$100,000.00.

WHEREFORE, the Court should grant judgment in favor of Plaintiffs and against Defendants and grant the following relief:

1. A declaration from the Court that Defendants failed to comply with OAR 441-325-0020(1) by not providing Plaintiffs with the required disclosure statement;

2. A declaration and order from the Court that the franchise agreement between Defendants and Plaintiff WCG is null and void and rescinded;

3. For Plaintiffs' First Claim for Relief, damages for Plaintiff WCG in an amount to be determined at trial but in no event less than \$1,000,000.00, damages for Plaintiffs Michael Werner, Julia Werner, David Glad and Tricia Glad in an amount to be determined at trial but in no event less than \$1,000.00, and an award of attorney fees, costs and disbursements pursuant to ORS 650.020(3).

4. For Plaintiffs Michael Werner, Julia Werner, David Glad and Tricia Glad's Second Claim for Relief, damages in an amount to be determined at trial but in no event less than \$100,000.00.

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5. All such other relief as the interests of justice require.

Dated this 23rd day of March, 2009.

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