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t/a Atlantis Paradise Island Resort and Casino

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FILED

JAN 25 2007

ATLANTIC COUNTY  
LAW DIVISION

PARADISE ENTERPRISES, LTD., t/a  
ATLANTIS PARADISE ISLAND  
RESORT AND CASINO,

Plaintiff,

v.

BRANDON G. DAVIS

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
ATLANTIC COUNTY

Docket No.

L-286-07

Civil Action

COMPLAINT

Plaintiff, Paradise Enterprises, Ltd., t/a Atlantis Paradise Island Resort and Casino, ("PEL") having a business address of 1000 South Pine Island Road, Suite 800; Plantation, Florida 33324-2345, by way of Complaint against the Defendant says:

1. On or about January 6, 2006 the Defendant was a patron of PEL.
2. Plaintiff seeks redress for Defendant's unlawful and fraudulent conduct in connection with a credit agreement signed on or about January 6, 2006 and Nine (9) checks ("Checks") or drafts tendered to it between January 6, 2006 and January 7, 2006 for a total amount of \$75,000.00 Defendant completed and executed the Checks and received the benefit of proceeds of the Checks and subsequently the Checks were returned not paid.
3. Plaintiff believes, and on that basis alleges, that Defendant executed and tendered the Checks and submitted them to Plaintiff with knowledge that the Checks would not be honored by any bank or depository.

**THE PARTIES**

4. PEL is a Bahamian corporation organized and existing under the laws of the Bahamas. Its principal place of business is in the Bahamas and it operates the Atlantis Paradise Island Resort and Casino (the "Atlantis Casino") in the Bahamas.

5. Upon information and belief, Defendant has an address at 1221 Ocean, Santa Monica, California 90401

**STATEMENT OF FACTS**

6. Defendant sought and requested the issuance of credit to him in the amount up to and exceeding \$75,000.00. In doing so, Defendant voluntarily signed a credit agreement document entitled "APPLICATION AND TERMS FOR CREDIT TO PARADISE ENTERPRISES LIMITED (PEL)" (the "Agreement"), attached hereto as Exhibit A. In the Agreement, Defendant agreed to be governed by New Jersey law, to confer personal jurisdiction on the courts of the State of New Jersey and to have the courts of New Jersey hear and determine all disputes concerning the Agreement. The Agreement provides as follows:

1. This agreement shall be governed, construed and enforced in all respects in accordance with the laws of the State of New Jersey, which state recognizes the enforceability and validity of gaming debts.

2. The courts of the State of New Jersey shall have jurisdiction to hear and determine any claims or disputes pertaining directly or indirectly to this agreement and to any matter arising therefrom.

3. The party in this agreement hereby expressly submits and consents in advance to such jurisdiction in any action commenced by the other in the New Jersey courts.

See Exhibit A.

7. The choice of law, jurisdiction and forum selection clauses contained in the Agreement were, and are, a vital part of the Agreement.

8. The choice of law, jurisdiction and forum selection clauses contained in the Agreement were presented to the Defendant in a fair and forthright manner and Defendant consented to them by signing the Agreement and receiving and accepting credit from PEL.

9. The choice of law, jurisdiction and forum selection clauses are reasonable, clear and contain no misrepresentations.

10. By signing the Agreement, the Defendant agreed pursuant to the choice of law, jurisdiction and forum selection clauses to submit to the jurisdiction of the courts of the State of New Jersey and, as a result, PEL, for these reasons and in reliance of Defendant's consent to the other provisions of the Agreement, extended credit based on the terms of the Agreement to the Defendant.

11. Defendant voluntarily signed the Agreement and, his subsequent actions of accepting credit and chips/money from PEL pursuant to the Agreement, as well as his issuance of Checks to PEL as hereinafter described, demonstrate his ratification and acceptance of the Agreement.

12. The Defendant also acknowledged his liability for payment on any debts he incurred under the Agreement as follows:

4. I am jointly and severally liable and obligated to pay PEL upon demand or statement therefore, all amounts advanced to me by PEL pursuant to this agreement, which amounts may also be evidenced by separate drafts executed by me.

See Exhibit A.

13. The Defendant also acknowledged that if PEL had to employ an attorney to collect any money advanced to him he would pay such costs, including attorneys fees, filing fees and court costs as follows:

5. I agree that in the event that it becomes necessary for PEL to employ the services of an attorney or agent to effect the collection of any sums which may be advanced to me pursuant to this agreement, I will pay all cost of collection including but not limited to any bank fees, a reasonable attorney's fee, interest at the maximum rate allowed by law, filing fees, court cost and any fees incurred through appeals.

See Exhibit A.

14. The Defendant also acknowledged that he read all portions of the application and Agreement, that such were true and correct and that if he knowingly provided false, inaccurate or misleading information, such would subject him to civil and/or criminal liability, as follows:

7. ... I further understand that knowingly providing false, inaccurate or misleading information in this Application and Credit Agreement may subject me to criminal and/or civil liability.

9. I have read and acknowledge all provisions of this application and agreement and represent that all statements made by me/us are true and correct.

See Exhibit A.

15. Defendant completed and signed the Agreement on or about January 6, 2006, naming a bank account at City National Bank, Los Angeles bearing account number ("Bank") against which he wished to draw on and for the Checks issued to PEL.

16. Based on actions and representations of the Defendant, the information he provided in the credit application and his signing of the Agreement, PEL extended Defendant a substantial line of credit. Defendant received this line of credit which he drew upon in receiving

cash or chips and has not disputed that these monies/chips were received by him.

17. On or about January 6, 2006 Defendant presented Nine (9) written Checks to PEL under the Agreement and obtained credit in the amount of \$75,000.00. The Checks were drawn against the Bank account Defendant listed in the Agreement. A copy of the Checks are attached hereto as Exhibit B.

18. PEL deposited the Defendant's Checks for payment through regular banking channels.

19. Unknown to PEL, the Bank dishonored the Checks either because defendant did not have an account at the Bank listed to cover the checks he had written or because he had a plan or intent to prohibit payment or the honoring of the Checks. The Checks were returned by the Bank dishonored and marked "NON-SUFFICIENT FUNDS." See Exhibit B. The Bank charged PEL the sum of \$270.00 as check fees (the "Return Check Fee") for the checks not honored or paid by the Bank.

20. PEL made demands of Defendant and attempted to collect the outstanding amounts still owing from the Defendant, to no avail.

#### **FIRST CAUSE OF ACTION**

##### **(Breach of Written Contract)**

21. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 20 of the Complaint as if fully stated herein:

22. PEL has fully performed its obligations to Defendant under the Agreement.

23. Defendant's failure to make payment under the terms of the Agreement constitutes a material breach of the terms and conditions of the Agreement.

24. As a direct and proximate result of the Defendant's breach of the Agreement,

PEL has been damaged in the liquidated amount of \$75,270.00 which amount includes the Return Check Fee. This liquidated amount excludes any and all interest, costs, filing fees and attorney's fees incurred in pursuing this matter.

WHEREFORE, PEL demands judgment against Defendant on the First Cause of Action for:

- a) compensatory, consequential and punitive damages;
- b) costs;
- c) pre-judgment and post-judgment interest;
- d) attorney's fees; and
- e) such other and further relief as the Court may find just and equitable.

#### SECOND CAUSE OF ACTION

##### (Fraud)

25. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 24 of the Complaint as if fully stated herein.

26. Defendant made representations to PEL regarding his credit history and net worth.

27. Defendant requested a credit line in excess of \$100,000.00 from PEL and represented that he was willing and able to pay checks drawn to PEL to repay all credit granted and drawn upon. Defendant signed the Agreement to this effect:

28. Defendant received credit from PEL in the form of cash or chips in the amount of \$75,000.00 and presented Nine (9) Checks to PEL as payment for the cash or chips provided for a total of \$75,000.00.

29. Based in part on the fact that the Checks did not clear, PEL contends that the

FROM:

Defendant was aware at the time he presented the Checks that his account had insufficient funds to cover the Checks or that he knew and intended at the time he presented the Checks that he had the intent and plan to order the Bank not to pay or honor the Checks.

30. Based on the Defendant's representations, PEL believed that the Defendant had sufficient funds in his accounts to cover the checks presented by him and that he would do nothing to prevent the Checks from being honored.

31. PEL relied on the representations that the Defendant made to it and the representations that the Defendant made by executing the Agreement that among other things, the Checks would be paid and honored.

32. As a direct and proximate result of the Defendant's fraudulent conduct, PEL has been damaged in the amount of \$75,270.00 which amount includes the Return Check Fee. This liquidated amount excludes any and all interest, costs, filing fees and attorney's fees incurred to collect the money owed to PEL.

WHEREFORE, PEL demands judgment against Defendant on the Second Cause of Action for:

- a) compensatory, consequential and punitive damages;
- b) costs;
- c) pre-judgment and post-judgment interest;
- d) attorney's fees; and
- e) such other and further relief as the Court may find just and equitable.

**THIRD CAUSE OF ACTION**

**(Conversion)**

33. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through

32 of the Complaint as if fully stated herein.

34. Defendant presented Checks to PEL in exchange for credit at the Atlantis Casino.

35. Defendant received the full benefit of the credit extended by PEL.

36. PEL did not receive payment on the Checks Defendant presented to them to obtain credit. Defendant has wrongfully retained control over the sums he promised to PEL in signing the Agreement and presenting the Checks.

37. As a result of Defendant's wrongful actions, PEL has been deprived of its right to \$75,000.00.

38. PEL relied on the representations that the Defendant made to it in the Agreement and by the presentation of the Checks to its detriment and injury.

39. As a direct and proximate result of the Defendant's actions, inactions and misconduct, PEL has been damaged in the amount of \$75,270.00 which amount includes the Return Check Fee. This liquidated amount excludes any and all interest, costs, filing fees and attorney's fees incurred in an attempt to collect the money owed to PEL.

WHEREFORE, PEL demands judgment against Defendant on the Third Cause of Action for:

- a) compensatory, consequential and punitive damages;
- b) costs;
- c) pre-judgment and post-judgment interest;
- d) attorney's fees; and
- e) such other and further relief as the Court may find just and equitable.

**FOURTH CAUSE OF ACTION**

**(Intentional Misrepresentation)**

40. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 39 of the Complaint as if fully stated herein.

41. In the Agreement, which allowed the Defendant to present checks to PEL in exchange for credit, Defendant promised to make full payment to PEL on the Checks and by the act of presenting the Checks, Defendant represented it to be instruments that would be honored by the Bank and that he would take no action to interfere with the Bank.

42. PEL believes that the Defendant knowingly and intentionally failed to disclose the fact that his account or accounts had been closed and did not have sufficient funds to make payment on the Checks presented to PEL at the time he presented them for payment or that he had a plan and intent to order the Bank to refuse to honor the Checks.

43. PEL believes, and on that basis alleges, that the Defendant knowingly and intentionally suppressed and concealed the above fact from PEL knowing full well that Defendant's inability to make payment on the Checks presented or his plan and intent constituted material information that would have prevented PEL from entering into the Agreement.

44. PEL, at the time that these representations were made to it and at the time that it entered into the Agreement, was ignorant of the falsity of the representations and believed all of Defendant's representations to be true.

45. In reliance on the Defendant's representations, PEL was induced to and did enter into the Agreement and received the Checks. Had PEL known that Defendant had an intent and plan to refuse to honor the Checks or had insufficient funds available to pay the checks, PEL would not have entered into the Agreement or received the Checks.

46. PEL's reliance on the Defendant's representations and omissions was justified given the Defendant's representations and because he knowingly and intentionally concealed

his lack of funds and/or his plan from PEL.

47. As a direct and proximate result of the Defendant's fraud and deceit as alleged above, PEL has been damaged in the amount of \$75,270.00 which amount includes the Return Check Fee. This liquidated amount excludes any and all interest, costs, filings fees and attorney's fees incurred in pursuing this matter.

WHEREFORE, PEL demands judgment against Defendant on the Fourth Cause of Action for:

- a) compensatory, consequential and punitive damages;
- b) costs;
- c) pre-judgment and post-judgment interest;
- d) attorney's fees; and
- e) such other and further relief as the Court may find just and equitable.

**FIFTH CAUSE OF ACTION**

**(Liability Under N.J.S.A. 12A:3-414)**

48. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 47 of the Complaint as if fully stated herein.

49. Defendant is the drawer of Nine (9) Checks that Defendant presented to PEL totaling \$75,000.00, which Checks are "drafts" Defendant presented to PEL to obtain credit.

50. PEL presented the Checks to Defendant's designated Bank for payment. None of the Checks presented to PEL by Defendant as drawer was accepted by the Bank and the Check was marked as "NON-SUFFICIENT FUNDS."

51. PEL is the person entitled to enforce the above-described Nine (9) Checks issued to it by the Defendant as drawer.

52. Pursuant to N.J.S.A.12A:3-414, Defendant is obligated to pay PEL on the Nine (9) Checks dishonored totaling \$75,000.00

53. Defendant has since failed to pay the amounts of the dishonored Checks well after demand for payment was made.

54. PEL now holds such Checks, and the Defendant has not paid since. Therefore, PEL demands judgment in the amount of \$75,270.00 which amount includes the Return Check Fee. This liquidated amount excludes any and all interest, costs, filings fees and attorney's fees incurred in pursuing this matter.

WHEREFORE, PEL further demands judgment against Defendant on the Fifth Cause of Action for:

- a) compensatory, consequential and punitive damages;
- b) costs;
- c) pre-judgment and post-judgment interest;
- d) attorney's fees; and
- e) such other and further relief as the Court may find just and equitable.

**SIXTH CAUSE OF ACTION**

**(Failure to Repay Loan)**

55. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 54 of the Complaint as if fully stated herein.

56. By virtue of the Agreement, PEL has loaned to Defendant a line of credit totaling \$75,000.00, which Defendant drew from and received in the form of cash or chips.

57. PEL performed its obligations to Defendant under the Agreement by loaning Defendant a line of credit totaling \$75,000.00.

58. Defendant has failed to repay PEL its loan to Defendant of a line of credit totaling \$75,000.00.

59. PEL has made demand of Defendant for said amount and there is now outstanding, due and owing to PEL the full amount of the loan to Defendant of a line of credit totaling \$75,270.00 which amount includes the Return Check Fee. This amount excludes any and all interest, costs, filing fees and attorney's fees incurred in pursuing this matter.

WHEREFORE, PEL demands judgment against Defendant on the Sixth Cause of Action for:

- a) compensatory, consequential and punitive damages;
- b) costs;
- c) pre-judgment and post-judgment interest;
- d) attorney's fees; and
- e) such other and further relief as the Court may find just and equitable.

**SEVENTH CAUSE OF ACTION**

**(Unjust Enrichment)**

60. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 59 of the Complaint as if fully stated herein

61. At all relevant times, PEL provided a line of credit to Defendant as set forth in the Agreement.

62. Defendant received the benefits of PEL's line of credit in cash or chips throughout the course of the parties' dealings and it is unconscionable for Defendant to reap these benefits without paying PEL.

63. By virtue of its conduct, Defendant has been and continues to be unjustly

enriched at PEL's expense in the amount of \$75,270.00 which amount includes the Return Check Fee. This liquidated amount excludes any and all interest, costs, filing fees and attorneys' fees.

WHEREFORE, PEL demands judgment against Defendant on the Seventh Cause of Action for:

- a) compensatory, consequential and punitive damages;
- b) costs;
- c) pre-judgment and post-judgment interest;
- d) attorney's fees; and
- e) such other and further relief as the Court may find just and equitable.

**EIGHTH CAUSE OF ACTION**

**(Breach of the Covenant of Good Faith and Fair Dealing)**

64. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 63 of the Complaint as if fully stated herein.

65. In addition to its express terms, the Agreement contains an implied covenant of good faith and fair dealing. By engaging in the wrongful acts described above, the Defendant has breached his obligations to act fairly and in good faith toward PEL.

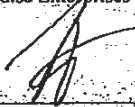
66. As a direct and proximate result of the Defendant's bad faith conduct, PEL has been damaged in the amount of \$75,270.00 which amount includes the Return Check Fee. This liquidated amount excludes any and all interest, costs, filing fees and attorneys fees incurred in pursuing this matter.

WHEREFORE, PEL demands judgment against Defendant on the Eighth Course of Action for:

- a) compensatory, consequential and punitive damages;
- b) costs;
- c) pre-judgment and post-judgment interest;
- d) attorney's fees; and
- e) such other and further relief as the Court may find just and equitable.

LEVINE, STALLER, SKLAR, CHAN,  
BROWN & DONNELLY, P.A.  
Attorneys for Plaintiff,  
Paradise Enterprises Limited

Dated: January 23, 2007

By:   
Benjamin Zeltner, Esq.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, Benjamin Zeltner, Esq. is designated as Trial Counsel for the Plaintiff.

LEVINE, STALLER, SKLAR, CHAN,  
BROWN & DONNELLY, P.A.  
Attorneys for Plaintiff,  
Paradise Enterprises Limited

Dated: January 23, 2007

By:   
Benjamin Zeltner, Esq.

**CERTIFICATION PURSUANT TO RULE 4:5-1**

Pursuant to Rule 4:5-1, the undersigned hereby certifies that the matters raised herein are not the subject to any other lawsuit or arbitration proceeding, and that there are no other persons or entities interested in the above action who have not been made a party to said action.

LEVINE, STALLER, SKLAR, CHAN,  
BROWN & DONNELLY, P.A.  
Attorneys for Plaintiff,  
Paradise Enterprises Limited



Dated: January 23, 2007

By: \_\_\_\_\_  
Benjamin Zeltner, Esq.

